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REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1001

TO AUTHORIZE APPROPRIATIONS FOR THE OFFICE OF FEDERAL PROCUREMENT POLICY FOR AN ADDITIONAL 5 FISCAL YEARS

APRIL 27, 1983

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REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

WEDNESDAY, APRIL 27, 1983

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, at 9:35 a.m., in room 485 of the Russell Senate Office Building, Hon. William S. Cohen (chairman of the subcommittee) presiding.

Present: Senators Cohen and Bingaman.

Staff present: Susan M. Collins, staff director; Jeffrey A. Minsky, staff investigator; Winthrop S. Cashdollar, professional staff member; Frances C. de Vergie, chief clerk; Rachel D. Harlan, assistant chief clerk; and Linda J. Gustitus, minority staff director and chief counsel to the minority.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. The subcommittee will come to order.

The Subcommittee on Oversight of Government Management has convened this hearing to consider legislation that Senator Roth and I have introduced to reauthorize the Office of Federal Procurement Policy for 5 years. The OFPP's statutory authorization expires at the end of this fiscal year, unless Congress acts to extend it.

The need for effective coordination of Federal procurement policy and reform is even greater today than when the Commission on Government Procurement first recommended over 10 years ago that a central procurement policy office be established. The dollar value of Government contracts has almost tripled during the past decade, from $57.5 billion in fiscal 1972 to $158.9 billion in fiscal 1982, with over 130,000 Federal employees now involved in the procurement process. The magnitude and budgetary significance of Government contracting mandate the existence of a strong central procurement policy office.

As chairman of the subcommittee, I have had the opportunity to work with the OFPP on a number of procurement issues. The Oversight Subcommittee worked with the OFPP in drafting a policy letter which requires Federal agencies to develop procurement agendas in advance of each fiscal year to help curb year-end spending sprees—the so-called hurry-up spending.

Most recently, the OFPP assisted the Oversight Subcommittee in drafting S. 338, the Competition in Contracting Act, which is intended to increase the use of competitive contracting and restrict noncompetitive—sole-source—contracting to only those circumstances where it's truly necessary.

The OFPP has exercised leadership in many other procurement activities, not the least of which is overseeing the implementation of Executive Order 12352 of March 17, 1982, on Federal procurement reforms. This procurement reform effort has been selected by the administration as one of the eight major initiatives which are being pursued under the reform 88 program to improve resource management. Other major OFPP projects include the continuing development of the Federal acquisition regulations and the revision of OMB circulars A-76 on contracting out and A-109 on major systems acquisition.

Any action on the part of Congress short of reauthorization would surely threaten the continuation of these projects and undermine the administration's procurement reform efforts. The OFPP serves as a critical link between the Congress and the executive branch in the continuing effort to improve the Federal procurement process.

While I believe that a central procurement office is still needed in the executive branch, questions remain as to the scope of OFPP's authority, the functions it should serve, the length of its reauthorization, and finally, its location. It is my hope that these and other issues can be given a thorough examination during the course of the hearing today.

As this Nation faces a widening disparity between Government revenues and government spending, it's essential that we find and employ the means to improve Government management. The coordination and reform of Government procurement policy are essential to improving the efficiency in the expenditure of money entrusted to the Government by the Nation's taxpayers.

We look forward to hearing the testimony today from a group of very qualified witnesses.

[The prepared statement of Senator Cohen follows:]

PREPARED STATEMENT OF SENATOR WILLIAM S. COHEN

The Subcommittee on Oversight of Government Management has convened this hearing to consider legislation that Senator Roth and I have introduced to reauthorize the Office of Federal Procurement Policy for five years. The OFPP's statutory authorization expires at the end of this fiscal year, unless Congress acts to extend it.

At the recommendation of the Commission on Government Procurement, Congress established the OFPP within the Office of Management and Budget in 1974, to provide overall direction and leadership in federal procurement policy-making. Prior to that time, procurement policies and procedures were needlessly diverse; there was no central office in the Executive branch prepared to provide the Congress with the recommendations for improving the procurement process, and there was no arbiter to reconcile agency disagreements on procurement policy.

For these reasons, a central procurement policy office—independent of any agency having procurement responsibility, empowered with directive rather than merely advisory authority, responsive to Congress, and consisting of a small, highly competent cadre of seasoned procurement experts—was established to fill this void.

The need for effective coordination of federal procurement policy and reform is even greater today than when the Commission first recommended over ten years ago that a central procurement policy office be established. The dollar value of government contracts has almost tripled during the past decade, from $57.5 billion in fiscal 1972 to $158 billion in fiscal 1982, with over 130,000 federal employees now involved in the procurement process. The magnitude and budgetary significance of government contracting mandate the existence of a strong central procurement policy office.

As chairman of this Subcommittee, I have had the opportunity to work with the OFPP on a number of procurement issues. In 1979 and 1980, the Oversight Subcommittee held a series of hearings on "hurry-up spending" during which we found that agencies rush to spend all of their remaining funds in the waning days of the fiscal year for fear of having their budget for the following year reduced. As follow-up to these hearings, the Oversight Subcommittee worked with the OFPP in drafting a policy letter which requires federal agencies to develop procurement agendas in advance of each fiscal year.

In 1981, this Subcommittee examined the adequacy of federal debarment and suspension procedures, which are intended to protect the government from doing business with fraudulent or otherwise irresponsible contactors. The Oversight Subcommittee found problems with these procedures, such as inaction by agencies in debarring or suspending contractors known to have defrauded the government as well as the failure of many agencies to honor the debarments or suspensions initiated by other agencies. Following these discoveries, the OFPP issued improved government-wide procedures and standards for debarment and suspension in a June 1982 policy letter.

Most recently, the OFPP assisted the Oversight Subcommittee in drafting S. 338, the Competition in Contracting Act, which is intended to increase the use of competitive contracting and restrict noncompetitive—sole-source—contracting to only those circumstances when it is truly necessary.

The OFPP has exercised leadership in many other procurement activities, not the least of which is overseeing the implementation of Executive Order 12352 of March 17, 1982, on Federal Procurement Reforms. The OFPP is responsible for providing leadership, policy guidance and coordination necessary to facilitate agency implementation of the Executive Order. This procurement reform effort has been selected by the Administration as one of the eight major initiatives which are being pursued under the "Reform 88" program to improve resource management. Other major OFPP projects include the continuing development of the Federal Acquisition Regulations and the revision of OMB circulars A-76 on contracting out and A-109 on major systems acquisition.

Any action on the part of Congress short of reauthorization would surely threaten the continuation of these projects and undermine the Administration's procurement reform efforts. The OFPP serves as the critical link between the Congress and the Executive branch in the continuing effort to improve the federal procurement process. The legislation which Senator Roth and I have introduced would preserve that link.

While I believe that a central procurement office is still needed in the Executive branch, questions remain as to the scope of the OFPP's authority, the functions it should serve, the length of its reauthorzation, and even its location. It is my hope that these and other issues can be given a thorough hearing today.

As this nation faces a widening disparity between government revenues and government spending, it is essential that we find and employ the means to improve government management. The coordination and reform of government procurement policy are essential to improving the efficiency in the expenditure of money entrusted to the government by the nation's taxpayers.

I look forward to hearing the testimony of an especially qualified group of witnesses.

Senator COHEN. Before I proceed to the first witness, I yield to my colleague, Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman. I'm just interested in learning what I can about the effectiveness of the office to date and what changes people believe are essential in order to improve the effectiveness of the Office.

I'm looking forward to the testimony. Thank you.

Senator COHEN. We're pleased to welcome our first witnesses, Joseph Wright, the Deputy Director of the Office of Management and Budget and Donald Sowle, the Administrator for Federal Procurement Policy, who will present the administration's position on the reauthorization of OFPP.

Since we do have several witnesses this morning, I would ask all witnesses to summarize their statements as best as possible. The full statement will be entered in the record.

Mr. Wright.

TESTIMONY OF JOSEPH R. WRIGHT, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET; AND DONALD E. SOWLE, ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY, OMB

Mr. **Wright**. Thank you, Mr. Chairman. I am pleased to be here to express the administration's views on S. 1001, which reauthorizes the Office of Federal Procurement Policy. I will submit the testimony for the record, with your permission, and will just very briefly summarize it.

The bill would not alter the Administrator's present authority, in our view. It would simply reauthorize the Office in its present form for an additional 5 years. We believe that the present authority should be extended, with some clarification and one addition. The statute should give the Administrator leadership and directive authority in matters of Government-wide procurement authority. In addition, we believe that the statute should authorize the Administrator to test new procurement techniques.

Mr. Chairman, we believe that is essential in order to really proceed with procurement reform.

We do not seek regulatory authority because we believe that OFPP can function effectively without it. As a matter of fact, we think that it could give us some internal problems in administering the act.

We do not support the codification in law of those agency management responsibilities which are set forth in our Executive Order 12352. Agencies are making progress right now in implementing the order, so we don't think that any purpose would be served by this. We believe that OFPP has functioned quite effectively in fulfilling the statutory mandate and has accomplished several significant, specific tasks, such as the submission of the Uniform Federal Procurement System proposal.

We do have some specific suggestions. First, those requirements in the existing act which have already been completed should be deleted. Second, we suggest that the bill provide for a transfer of the Federal Acquisition Institute. Very simply, Mr. Chairman, OMB's role should be one of policy formulation and oversight, rather than the actual doing of a program such as the training of procurement officers.

Third, we would have preferred to have had OFPP report within OMB to the management side because we think that both would have been strengthened, rather than have a separate line item within the Executive Office of the President. That gives us some management problems, but it's not critical.

Notwithstanding the above concerns, Mr. Chairman, we do support S. 1001 and hope that the changes we have recommended will be adopted.

Thank you very much.

Senator **Cohen**. Thank you very much, Mr. Wright. Mr. Sowle.

Mr. SOWLE. Thank you, Mr. Chairman. Also, I will abbreviate my statement this morning. It's a pleasure, of course, for me to be here to accompany Mr. Wright and to talk to this committee about the reauthorization of the Office of Federal Procurement Policy.

Some of the questions that you addressed to me, Mr. Chairman, in your letter of April 11, have already been addressed by Mr. Wright, and I will therefore concentrate my abbreviated testimony on describing the background, mission, and functions, budget and staffing levels, major OFPP projects, such as the Federal Acquisition Regulation and the development of the Uniform Federal Procurement System, and the implementation of the Executive order.

The Office of Federal Procurement Policy was authorized initially in 1974 for 5 years and placed in OMB. It was given the authority to provide overall direction of Federal procurement policy and to prescribe procurement policies, regulations, procedures, and forms for all of the executive branch agencies. Its fundamental objective was to provide economy, efficiency, and effectiveness in Government procurement.

In 1979, Congress reauthorized OFPP and directed the Office, as its first priority, to develop a comprehensive, innovative procurement system which is the Uniform Federal Procurement System.

Over the past few years, our budget and staffing levels have declined slightly in accordance with the administration's pledge to reduce the overall cost of Government. Our fiscal year 1980 budget was $3 million, with 49 full-time equivalent staff. In fiscal year 1983, we have an estimated budget of $2½ million and 42 full-time equivalent staff members. I am satisfied that OFPP is able to operate effectively at these levels.

Principal among our achievements in OFPP was the development of a proposal for a Uniform Federal Procurement System, which was submitted to the Congress in February of 1982 and, as you know, this was directed by the Congress. The Uniform Federal Procurement System is a blueprint for procurement reform, which will continue to guide OFPP's efforts and the agency procurement operations well into future years.

In March of 1982, following the submission of the UFPS, the President issued Executive Order 12352 on procurement reform. The Executive order is the keystone of the administration's program to reform Federal procurement practices in concert with a broader management reform program, referred to as reform 88. It essentially requires that those aspects of procurement reform identified in the UFPS proposal which can be accomplished administratively be carried out without waiting for legislation.

Another major effort which has occupied OFPP's time and resources is development of the Federal Acquisition Regulation, which we refer to as the FAR. The FAR will consolidate the three primary procurement regulations into one regulation and will significantly reduce the volume of procurement regulations that are out there for people to follow.

The FAR is now in the final stages of its development. DOD, GSA and NASA are continuing their joint efforts, as directed by the Executive order, to complete it. The FAR will be printed in the Federal Register in September of 1983 and will become effective April 1, 1984.

The Office of Information and Regulatory Affairs will publish a Federal Register notice shortly which will have the effect of binding DOD, GSA, and NASA to implementing the FAR by April 1 of next year.

Mr. Chairman, we will submit an activity report to the Congress in the next few days covering numerous other projects that have been completed and are now underway, as well as our short- and long-range plans for the future.

I would be pleased at this time to answer questions.

Senator COHEN. Thank you very much, Mr. Sowle.

Mr. Wright, as you know, a central issue to be considered this morning is the scope of the OFPP's authority. I notice on page 3 of your statement, you recommend that the statute should give the Administrator of OFPP leadership and directive authority in matters of Government-wide procurement policy. Several paragraphs later, however, you state that OFPP does not need regulatory authority to function effectively.

I think it would be helpful this morning if you could define the following terms for the subcommittee—leadership, directive authority, and regulatory authority—and then explain how OFPP can exercise leadership and directive authority effectively without regulatory authority.

Mr. WRIGHT. Good question, Mr. Chairman.

Senator COHEN. It's confusing to me. I don't know how it is for you. [Laughter.]

Mr. WRIGHT. Well, we believe it's necessary to have an organization that has the overall responsibility for policy and oversight, establishing the rules of the game and making sure that they are followed within the entire procurement process of the Federal Government.

I think that OFPP has done a very good job in establishing those rules of the game and putting themselves in a position, through the policies they've come up with and the FAR, of making sure that we do have a uniform procurement system that is carried out throughout the Government.

Now you've got to have an office that has oversight responsibility and we believe the Executive order does provide that oversight responsibility. We do not believe that we have to take the the Executive order and put it into legislation to make it into regulatory authority to be carried out. We think that we can do this within the executive branch.

So we think that we've gone far enough to be able to carry out the mandate of the act. We don't have to actually then put it into the legislation. That's all.

We're trying to reduce regulations more than put more of them into legislation.

Senator COHEN. In other words, you expect OFPP to exercise leadership by issuing nonbinding directives which the administration cannot enforce?

Mr. WRIGHT. But they are binding within the executive branch.

Senator COHEN. OMB is supposed to insist on the compliance with the policy directives issued by OFPP. Is that right?

Mr. WRIGHT. That's exactly right. Now, the Executive order is one way that the President does exercise direct line authority over

Cabinet departments and the agencies. The interesting part is that during the last year or so we've had a fairly sporty exchange with many of the line agencies as to whether or not we should be exercising this authority and whether or not we've gone too far in this area. And Don Sowle and his people, I think, have done a very good job of negotiating through a fairly difficult route with the agencies and now they have them basically on board. We are moving well.

I was in a meeting the other day where there was a request that we delay the implementation of the FAR. We said, no, we're not going to do that. We're coming out on the schedule that we had originally proposed. They said, fine, and we're moving forward. This could actually cause us some problems if OMB were to request the committee to codify the requirements of the Executive order into legislation. We would prefer that this not happen because we don't think it's necessary.

Senator COHEN. The Oversight Subcommittee polled nearly 50 contracting experts and associations to determine whether regulatory authority, as originally provided in 1974 and then revoked, as Mr. Sowle indicated, in 1979, ought to be restored. Over 90 percent of those contracting experts who responded to our questionnaire favor restoration of that regulatory authority.

How do we account for this disparity between the position of those who have to do business with the Government and the executive branch position in reinstating regulatory authority?

Mr. WRIGHT. Well, first of all, Mr. Chairman, we haven't seen the results of that survey yet. So I guess I would like to have a chance to see what the results were. But that doesn't surprise me that the executives would come up and say that they would like to have regulations in legislation that they can go on ahead and count on to make sure that there are uniform policies carried out throughout the Federal Government.

Senator COHEN. Does that make sense to you?

Mr. WRIGHT. From their point of view it does.

Senator COHEN. Right.

Mr. WRIGHT. From our point of view, we're the ones that have to carry it out, and we think that we are carrying it out right now. And we simply don't think that they're necessary.

Senator COHEN. But what they're saying is I'd like to see something on a long-term basis, something that is fixed and can be counted upon and have some regulatory authority to implement its issues.

Mr. WRIGHT. I know that, but, you know——

Senator COHEN. Regularity of regulations is what they're looking for. This is something, I think, that we're all trying to strive for—an ability to allow the private sector and others to count on a continuity of policies.

I would like to turn to another issue. Is there anything in that Executive Order 12352 which you do not feel should be made permanent?

Mr. WRIGHT. Well, Mr. Chairman, I guess my answer is going to come back, and I don't mean to sound like a broken record on you, but I don't think that that Executive order should be made permanent. I believe that we are——

Senator COHEN. I looked through the Executive order, and I agree with everything in it. I think it makes very sound policy.

Mr. WRIGHT. I do, too.

Senator COHEN. And I just can't imagine why you wouldn't want to have that continue, not only for this administration, but assuming—well, I won't assume anything, but future administrations as well. [Laughter.]

If 1984 works out the way I'd like it to, we'd continue those same policies. But if it doesn't, I'd like to have a successor administration follow the same Executive order. During the Carter past administration, there was a good deal of retrenchment in the field of procurement policy, and not for betterment of the system.

If you agree that the guidelines and policy goals contained in Executive Order 12352 are desirable, why wouldn't we want to make them more permanent, rather than have them subject to the shifting whims of the population?

Mr. WRIGHT. Would you like me to state what's in the Executive order or just answer the question?

Senator COHEN. Would you briefly describe the directives set forth in the Executive order?

Mr. WRIGHT. Well, basically, what it does, it requires that the head of each agency appoint a procurement executive to manage the agency's procurement function. The agencies initiate procurement reforms and that OMB's Office of Federal Procurement Policy work with the agencies to provide policy guidance and leadership and report the progress to the President. Then there are some additional items in there regarding Defense, GSA, and NASA.

Senator COHEN. Let me just read what I have here as the basic directives of the Executive order.

Mr. WRIGHT. OK.

Senator COHEN. Reduce administrative costs and other burdens imposed by procurement functions on the Government in the private sector. Strengthen the review of programs to balance needs against priorities and resources. Establish criteria for enhancing effective competition and limiting noncompetitive actions. Simplify small purchases and minimize paperwork burdens. Establish career management programs conducive to securing and maintaining a highly qualified, well managed, professional procurement work force. And finally, designate an agency procurement executive with responsibility to oversee development of procurement systems, evaluate systems performance.

Now is there anything there that you can imagine would not be good policy to continue into the President's second term, or into his successor's first term?

Mr. WRIGHT. What you're talking about right there is what the task groups are focusing on in terms of that Executive order. No; I don't have any problems with any one of those items as part of the Executive order. I guess I do have some problems with taking the directives of the Executive order, if you want to call them the rules of the game, and codifying them in legislation and making sure that they are permanent and they cannot be adjusted, when, by the nature of it, reform is a changing environment.

And I question, once we have a smooth operating procurement system that is uniform, that is established throughout the entire Federal Government, whether or not we will eventually want to maintain the same type controls. And I'm not saying that we wouldn't. I just say I question it.

And one of the advantages of an Executive order is you do not have to go through the legislative process again to give yourself flexibility when it should be applied. And I just think that the present system right now is working on a very smooth track with the agencies, and we ought to leave it that way.

Senator COHEN. You indicated in your statement that giving OFPP regulatory authority might create tension between some of the major procuring agencies, such as DOD, GSA, and NASA. Les Fettig, who is going to be testifying shortly after you and who was the Administrator of OFPP during that period of time when it had regulatory authority, has stated that there was no collapse in agency mission performance and no heavy-handed intervention in contracting decisions.

After all, the OFPP is statutorily prohibited from intervening in the daily management of the agencies' procurement operation. What if OFPP were simply given the statutory authority to reconcile agency disputes in the regulatory process?

Mr. WRIGHT. Again, I guess I would say, Mr. Chairman, I'm not so sure that that's necessary in order to carry out the responsibilities of the act.

Senator COHEN. How are disputes between the procuring agencies resolved now?

Mr. WRIGHT. Basically, OFPP plays a major role in resolving agency disputes by bringing the three primary contracting agencies together, or procurement agencies together, and hammering them out, establishing the policies by which they will negotiate out their disputes. And then making sure that they're done.

Senator COHEN. My understanding is that there is a Cabinet Council on Management Administration that resolves disputes. Mr. Sowle, is that true?

Mr. SOWLE. I don't think that they really resolve problems. The Cabinet council—Mr. Wright is much more familiar with the functions of the Cabinet councils than I. The Cabinet councils really review programs and problem areas and report these to the President, and he makes a decision based upon the options given to him, as I understand it.

Mr. WRIGHT. Mr. Chairman, that Cabinet council is dealing on very high-level policy issues. They would not get into an individual procurement dispute between agencies.

Senator COHEN. All right. Now you say OFPP currently is the mechanism whereby you resolve disputes between agencies.

Mr. WRIGHT. I'll let Don Sowle speak to this.

Mr. SOWLE. I think, Mr. Chairman, at the present time we do have policy directive authority. And if there is a dispute that we feel is not being resolved, then we do have the authority to publish policy which would have to be followed by the Federal agencies.

Senator COHEN. According to a draft General Accounting Office report on the progress in implementation of Executive Order 12352, one of the major weaknesses is in this area of resolving conflicts. Do you agree with that GAO analysis?

Mr. SOWLE. Well, not completely. I think that if everything were laid out in a real nice form, as the GAO would like to see, we probably would make some changes. But I do think that we have adequate ability now within the framework of the policy direction, and we've got to have that. If we don't have policy direction, then we are in a very compromising sort of way insofar as getting anything done.

As long as we do have policy direction, I think that we can work out with the agencies anything that is significant or serious insofar as the procurement process is concerned. I guess I would point out, however, Mr. Chairman, that the three regulatory agencies got together and voluntarily produced a memorandum of agreement as to how they were going to complete the FAR. For example, it stated how they were going to complete the FAR, how they were going to resolve disputes, and in that agreement, they did say that if they couldn't get together within the agencies, that they certainly would consider bringing OFPP in to help them resolve disputes. So I think the working relationship is basically a fairly rational and reasonable one.

Senator COHEN. Mr. Wright, you recommended that the statute should authorize the Administrator of OFPP to test new procurement techniques. And I think you indicated that testing authority is needed to develop empirical data to show that new procurement methods and procedures are viable.

Would you elaborate on what you mean by that?

Mr. WRIGHT. Mr. Chairman, I'll cover it just very briefly and then let Don get into the procedures, if you wish.

Right now, one of the advantages of having a uniform procurement process through the FAR is that you make sure that exceptions do not occur that you do not want to occur, which would either be inefficient, would be too costly, or will limit competition.

The other side of that coin is there are circumstances that may come up to where you say, we would like to try out a new procurement process to see whether or not we can't improve the efficiency, we cannot improve the economies, the competition, whatever it is.

And, unfortunately, we'd be kind of hung on our own petard if we do not have that flexibility under those special circumstances. And what we're proposing is that we have the ability to, under special circumstances, test new procurement processes that are new, different, improvements, and all the rest of it. The present act does not give us that flexibility.

Senator COHEN. Mr. Sowle, do you want to add to that?

Mr. SOWLE. Yes. I think, Mr. Chairman, of all the things we're really seeking, this is perhaps the most important of all. We're really talking about procurement reform. You know, over the last 35 years, we've had the authority to run tests and do whatever we want, as long as there are no laws involved. But in some of the most significant areas where we need reform, or as I envision we might need reform, there are specific laws that preclude our doing anything. It's hard to get those laws changed unless we have data to convince the Congress that it's going to be a viable program to change the process or the procedure or whatever.

And I think as long as we do not have testing authority, we're going to just keep moving on and on and on and never have a chance to really test out new and innovative procurement methods. A number of reforms, not necessarily procurement reforms, have been built into the system over the years by the Congress. We would like to have an opportunity to come up to the Congress with data to show what reforms are really necessary and what laws should be changed or modified.

Senator COHEN. Senator Bingaman?

Senator BINGAMAN. Well, let me just ask about the defense procurement area for just a moment. Being on the Armed Services Committee, as Senator Cohen is, we hear a lot of criticism in and out of that committee about defense procurement policy and inequities and waste in that process, especially with the administration's tremendous increase in procurement that we're now engaged in.

Mr. Wright, I wanted to get your opinion as to whether there are major problems in the defense procurement procedures and practices that are now in place?

Mr. WRIGHT. Well, Senator Bingaman, one of the purposes of this entire exercise of coming up with the Uniform Federal Procurement System, as well as the FAR, is to correct any of those problems that could have occurred and developed over the years. I would say if we were to allow the old procedures to remain in place, we would not have made the changes that we have over the last couple of years, and you would have had a rapid growth of problems in procurement. Yes; you could have serious problems.

I am not expert enough to be able to say exactly where those weaknesses occur. Now maybe Don Sowle would like to. But I would say that we would be in a dangerous position today with a growth of programs like that, if we would not have gone through the development of the Uniform Federal Procurement System and its implementation under Executive Order 12352.

Don, do you want to add to that? But I can't be specific for you.

Senator BINGAMAN. Yes. Before we get on, your view is that if we had not done what we had done in the last 2 years, we would have problems in this area. But you don't perceive any significant problems right now? Is that an accurate paraphrase?

Mr. WRIGHT. I'm not familiar enough with the specific procurement activities of the Department of Defense and what problems may exist today. I'm just saying that if OFPP would not have worked with DOD in developing the FAR, I think we would be having problems with the program growing like that.

But, again, Don, do you want to add to that?

Mr. SOWLE. Well, I think the biggest area, the biggest problem whether it's Defense or any one of the agencies is in the area of competition, basically. The statutes are so old and outdated that I think, unless we get some basic changes in the statutes, we're never going to be able to get the competitive environment established and get the competition that we need in procurement. That just doesn't exist today.

Senator Cohen has recently introduced S. 338 which, among other things, provides for necessary changes in the statutes relating to competition. These changes affect Defense as well as the other agencies. Senator Cohen recognized the need for change, as presented in our blue book. This need for change has existed for 35 years, and only now are we saying, that we have to do something about the paperwork involved, the degree of competition, how we get competition, how we develop sources and all of the other things that are necessary, and how we control noncompetitive procurements. All of these things are in Senator Cohen's bill.

We need authority on a lesser scale then S. 338, to test new procurement methods and techniques when we run into problems. We should be able to work on them immediately and not wait for 10, 15, 20 years, in order to decide what we ought to do.

Senator BINGAMAN. Now, is it your opinion that the changes that are needed to correct these deficiencies in defense procurement, in particular, have to come about through statute, that your agency cannot, absent changes in statutes, do anything significant to correct the situation?

Mr. SOWLE. Well, there are two things there, Senator Bingaman. The first is we do not get into individual agency problems at all. Now if there's a policy trend, obviously we do have authority to initiate policies, but it has to be a policy that affects more than one agency. I would assume the kind of things you may have in mind, and I don't really know what all the deficiencies are in the Defense Department, but I would assume the kinds of things that you may have in mind actually would affect more than one agency. And so we could put out a policy, as we have done, for example, in debarment and suspension that applies across the Federal agencies.

The Federal Property Administrative Services Act is fairly parallel to the Defense Department Armed Services Procurement Act. Unless we get changes in those statutes, we aren't going to realize the benefits of the reforms that can be made and should be made as the need for them develops.

Senator BINGAMAN. Thank you.

Senator COHEN. Let me just follow up on a couple of things. I would point out, Mr. Sowle, that 2 years ago, there were absolutely no uniform procedures for debarment or suspension of contractors who defrauded the Government and equally as important, there was no universality of their application.

We had hearings a couple of years ago that pointed out that a contractor could be debarred or suspended from one agency because of either fraud, incompetence, or whatever, and then walk right across the street to a different agency and start contracting again. There was no universal application of any kind of uniform procedure for debarment or suspension.

Mr. SOWLE. Yes, sir. And I think the impetus that your committee and the effort that we took along with the agencies was in that case adequate.

Senator COHEN. And I thank you for that. I also want to take this opportunity to thank you and your staff, particularly Pat Szervo and Leroy Haugh for assisting the subcommittee on the Competition in Contracting Act. There are, however, a couple of major differences between the Uniform Federal Procurement System which you have recommended and the Competition in Contracting Act. One of the major differences is in the exceptions to competition. Your proposal contains an additional exception—when competition is impracticable.

Under the existing statute, there are 17 exceptions to formal advertising through which agencies are authorized to negotiate. The one exception that is most frequently invoked is the "competition is impracticable" exception. About 60 percent of all the contracts that are let that don't go by way of competition are negotiated noncompetitively under that exemption. Why have you retained this exception as opposed to eliminating it.

Mr. SOWLE. Well, Mr. Chairman, there are two things that I would like to mention. First of all, the 17 exceptions—you know, the present statutory base does not say that you get competition or don't get competition. This is very clear in your bill. But the 17 exceptions are exceptions to advertising. The present law, both in the Armed Services Procurement Act and the Federal Property Act, requires that before you go out and buy anything, you have to formally advertise it. In other words, go out with detailed specifications, get a fixed price, and then make the award.

Now we think that's wrong and it's been wrong for many, many years. Your bill, as well as our proposal, and I understand the House bill also, requires the decision has to be made whether you go competitive or noncompetitive.

Your bill permits noncompetitive procurements in six different circumstances, basically the same six that OFPP proposed; and in addition, OFPP has proposed one additional area of noncompetitive procurement. The additional one, as you well know, permits an agency head the discretion to make the determinations to go noncompetitive. This is different from the old exception 10 to formal advertising where you can just make a decision to go sole-source because there are no other sources available. The agency head under the OFPP's seventh item would have to make that judgment that it's in the best interest of the agency and the Government and necessary for mission accomplishment before he could go noncompetitively.

Initially, we did not have that in our proposal. But in our coordination process with the agencies, the agencies thought that maybe none of us are as bright as Solomon and therefore, we ought to have an escape hatch at a high enough level so that if something came up that we couldn't anticipate, that the agency head would have the authority to make a noncompetitive procurement and properly document the record as to why he was doing that. I still think that this is fair and probably necessary, at least for a few years, to get experience on what is really handled under that seventh condition.

Senator COHEN. I also recall that you recommended a test program as opposed to Government-wide application. Why is that?

Mr. SOWLE. Well, Mr. Chairman, I think there's been a lot of misconception over what we meant by a test program. In my terms, no matter what kind of a major change we'd make in the procurement process, we have to have some period of time to assure that the changes are going to be put into effect in an orderly way. And that was the intent of our test program.

Now, albeit, there was probably too much time allocated in our proposal. I would think at this point that we do not need a test program, as a lot of people think of it. But we still are going to have to have some time for implementation of your bill when it's passed to assure that we're doing this in a very orderly, constructive and workable way. This thing has been taken out of context too many times, I think.

Senator **Cohen**. The only point I would make is that some of these recommendations date back to the Commission on Government Procurement's recommendations made in 1972 to reform our procurement practices. That took time and then in 1974, we had the first authorization. Then OFPP was reauthorized in 1979, and here we are in 1983.

I'll be out of this seat by the time I ever see the Competition in Contracting Act put into effect. But that's just one of the frustrations that many of us face when we implement something now that has long-term effect. You will never see the results until a decade or two later. And I understand that.

But it just seems to me that you have got to be careful. Every time we come up with a new proposal on Capitol Hill, whether it's hurry-up spending or competition in contracting, some agency will want to try it out on a test basis rather than implement it. Let's not move too quickly. And the problem is, and I appreciate the need for prudence and hesitancy, that we tend to drag our feet so long that years go by, decades go by, and it's the same process over again.

And that's why I raised the differences between your UFPS and the Competition in Contracting Act. Your seventh exception that states "when it's determined by the head of the agency that it is impracticable to obtain competition" is the same exemption to formal advertising that we have had and has been abused for so many years.

Mr. **Sowle**. Yes, Mr. Chairman, but there's a major difference. One is the contracting officer could make that judgment before. And they used that and they were pressured into using it by the technical people whenever they wanted something done in a hurry or a single source. Pressure was put on the contracting officers and they gave in. Or they made a judgment without proper review.

We're saying that this is wrong. It is the agency head or a very high-level person within the agency who is going to make that judgment, not those at the operating unit. That's a significant difference, sir.

Senator **Cohen**. Now, one of the primary attributes of a central procurement policy office envisioned by the Commission on Government Procurement was that it be responsive to Congress. In a letter to Ed Meese from Deputy Secretary of Defense Paul Thayer, which was made public earlier this month by the House Government Operations Committee, it seems clear that one of DOD's objections is that the OFPP is a bit too responsive to Congress. Let me just read the letter.[1]

> Dear Mr. Meese: As you know, DOD recently commented on a legislative proposal written by OMB * * *. Certain aspects of the proposal just do not seem to be in line with how I believe government agencies should be organized or operated. First of all, I do not believe the executive branch should propose the continuation of a legis-

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[1] See p. 135 for complete letter.

> lative authorization of this function when this can be accomplished by the executive authority of the President. Second, the proposed legislation requires the Office of Federal Procurement Policy to report policy matters directly to the Government Operations Committees of Congress. I do not believe that we should support this direct reporting requirement.

And then it goes on. I won't read the entire letter. But do you agree with those observations on the part of Mr. Thayer?

Mr. SOWLE. No. You know, as long as you have any agency of the Federal Government, of the executive branch, there will be oversight by committees of the Congress, and, in my judgment, it's proper that the agency work with the oversight committees, work with the Congress and be responsive.

I do not know of any situation ever with the Office of Federal Procurement Policy where the interests of the Congress and the interests of the administration were so diverse that you couldn't have loyalty to both the requirement of the legislation, in our case, to be responsive to the Congress and also to serve the purposes of the administration.

I suppose, I don't know what really prompted this on the part of Mr. Thayer, but I suppose that if the Office did not have directives—regulatory—authority, and the administration believes that we could operate without this, that we would probably have less contact, but I don't think that we would have any less meaningful contact with the Hill in either case.

Senator COHEN. You don't find any friction between DOD and OFPP?

Mr. SOWLE. Oh, I wouldn't say that. [Laughter.]

Senator COHEN. What would you say?

Mr. SOWLE. I'd say that whenever you have any agency such as ours, or OMB, for that matter—I think you could ask Joe Wright the same question, does he ever have any friction with the agency—whenever you have a job to do that has an impact on an agency, you're bound to have situations where there's some degree of friction. Now whether we'd call it friction or a need for further discussions or whatever, certainly there are situations where we have to sit down with the agencies and have some pretty down-to-earth discussions on what's intended by the administration, by the Office, and how policies ought to be carried out.

Mr. Wright referred to one of these, just recently, when he met with the agencies on the FAR, a very down-to-earth discussion, I think, and very helpful, very beneficial.

Senator COHEN. Don't you find that Congress or the Government Operations Committees provide some insulation for OFPP?

Mr. SOWLE. I'm sure that this is true. I'm sure that this would be true, Mr. Chairman, whether we were set up statutorily, direct statutorily or through OMB. I think we would still have that support from the Congress.

Senator COHEN. Now as the Administrator, you are authorized to issue procurement policy directives with the concurrence of the Director of OMB. And you require agencies to issue regulations implementing those directives.

An example of this is the 1981 policy directive which requires agencies to develop procurement agendas in advance of each fiscal year to prevent unnecessary yearend spending.

Have the procuring agencies implemented this policy directive to OFPP's satisfaction?

Mr. SOWLE. I really think they have.

Senator COHEN. I'm sorry, I didn't hear that.

Mr. SOWLE. I say I believe they have.

Senator COHEN. They have.

Mr. SOWLE. The degree, of course, I guess is always questionable. However, in fiscal year 1982 compared to fiscal year 1981, out of $159 billion in fiscal year 1982, there was $38 billion spent in the fourth quarter, which is 24 percent. And in fiscal year 1981, this figure was 32 percent.

So I think from that viewpoint, there are improvements being made. Right now, Mr. Wright has asked us to get together an advanced notice to all of the agencies for his signature which will again remind the agencies that we are not giving up on the fourth quarter spending, and they are being cautioned also not to do in the third quarter what they might be tempted to do in the fourth quarter.

So I think we are really after this, and I think the agencies are being responsive.

Senator COHEN. How do you enforce the policy directive? What do you do?

Mr. SOWLE. Well, we almost have to do this, Mr. Chairman, on an exception basis. The Commission on Government Procurement——

Senator COHEN. I just want to go back for a moment. Mr. Wright, you're probably familiar with the history of the circulars coming out of the Bureau of the Budget that date back, I believe, to 1921, when agencies were first prohibited from entering into contracts and obligations involving large amounts of money during the last month of the fiscal year. That circular was going around for 50 years, 60 years, and it had been ignored systematically over that period.

So I'm really just trying to find out whether or not the initiatives which have been taken by OMB and OFPP are effectively implemented by the agencies.

How do you go about enforcing that?

Mr. SOWLE. Well, I think in that particular case, we really depend, in fact, in most cases insofar as procurement policies are concerned, we must depend on the agency heads. There's no way that a small office such as ours can actually police what's going on within the Federal agencies.

Now we do have confidence in that the agency heads are responsible people, that they are responsible for the management of their agencies. They know what the policies are. They have IG's. They have internal audit. They have a management team that watches over the operations of the agencies. And unless there's some particular problem that develops that we become aware of, we really don't have the capability for full enforcement of policies. We have to depend on the agencies for that.

Senator COHEN. Mr. Sowle, on page 7 of your prepared testimony, you indicate that OFPP is leading and coordinating the implementation of Executive Order 12352. As I mentioned before, according to GAO there are only a few agencies that are actually following that particular plan. The GAO study, which I asked for on the progress of this Federal procurement reform under the Executive order indicates that the implementation of the order has been slow and inadequate. While 45 agencies have appointed procurement executives, as required under the order, GAO found that of the 12 agencies that it sampled, only a few of the procurement executives appointed have been given the authority to carry out the order's requirements. And the GAO report also cites the problem of widespread belief that the agencies are free to reject the guidance of the OFPP to achieve that policy reform.

What's your response to the GAO's report?

Mr. SOWLE. Well, I think the GAO would like to see this move faster. I would like to see it move faster. But I think there's a matter of turning this thing around that's been going on for 35 years. There is certainly an uneven response by the agencies, an uneven recognition of the significance of procurement within the agencies. In fact, there is a significant difference among the agencies.

Senator COHEN. What difference is there?

Mr. SOWLE. Well, the dollar volume. That's what I had in mind. The Defense Department, for example, has about $125 billion in procurement. GSA has about $3 billion, which is less than 2 percent. So, you know, there are different magnitudes that we're dealing with and different viewpoints on how fast the agency head feels he has to move toward reform in the agency.

Senator COHEN. Would you think that the larger the procurement budget the faster you ought to move toward reform?

Mr. SOWLE. I would think yes. However, I would also add quickly that probably the ability to move faster is much less possible with a large agency.

Senator COHEN. Has it been your experience in dealing with DOD that there has been that sense of urgency to reform its procurement practices in view of the large amount of money that it spends on procurement?

Mr. SOWLE. Well, I don't know that I have a really good viewpoint.

Senator COHEN. What I would suggest to you is that it's probably just the opposite—that there is no real sense of urgency in DOD to reform its procurement practices.

Mr. SOWLE. I don't believe I would agree with that, Senator Cohen. I believe that the Defense Department, and really all of the departments, certainly at the levels that we're dealing with and trying to get this thing kicked off, are very much supportive of procurement reform.

I would point out that in the six task groups that we set up, we required that either a general or flag officer, or one in an SES position head these task groups. Four of the six task groups are chaired by volunteers from the Defense Department, and they're doing an excellent job of pulling these groups together and trying to come up with procurement reform that will impact the entire Federal Government. I'm really pleased with the effort of the Defense Department.

Senator COHEN. Do you think that the DOD should support S. 338, the Competition in Contracting Act?

Mr. Sowle. Yes; and I think basically they will. I don't know that, but I think they will.

Senator Cohen. I'm going to cite your testimony over in the Armed Services Committee when we take it up.

Mr. Sowle. I think basically they will. You know, they coordinated and agreed with the blue book—the proposal for a uniform Federal procurement system. Your bill follows very closely what we have in the blue book. I think that they have certainly worked with the House on a similar bill. The tracks of the two bills aren't that far apart. I would think that they would support it. Obviously, they will not support it 100 percent, but I think the thrust of your bill they would support.

Senator Cohen. I think it's all the more important, particularly with DOD, that we do move as quickly as we can on procurement reform because that Department is coming under quite a bit of criticism in recent months about the size of its budget. Yesterday, there was another article on the C-5 cost overruns. I mean it goes on, and I can give you a whole list of programs where programs are millions, indeed billions, of dollars over their original cost. The F-18 comes to mind, where we started out with a project that was going to cost $14 billion; it's now up to $40 billion. So there's a real question on how we go about procuring the property and services that we need.

Let me go back to the FAR. The 1974 OFPP Act required the Office to consolidate Government-wide procurement regulations into a single, simplified, understandable regulation, which you call the FAR, the Federal Acquisition Regulation. Originally, this was going to be issued in 1980. Three years have passed and the FAR still isn't issued.

How do you account for the delay in the implementation of the FAR?

Mr. Sowle. I think the initial estimate of the size of this task was underestimated. I think everyone was optimistic about how fast they could move. To get a massive document like this prepared with the review necessary, the public comment necessary, and the evaluation of all the comments, I believe the schedule was a little optimistic to begin with.

I would also point out, though, that in direct effort by the project offices, there has been over 250 person-years of effort that goes into this, professional effort, and probably at least 10 times this when you consider the agencies other than the project offices and the public.

You know, it's really a massive effort.

I believe the agencies have gotten mixed signals. OFPP initially was given regulatory authority and was told to get a FAR out. Public Law 95-507 reinforced this mandate in 1978. Then in 1979 Congress removed OFPP's regulatory authority and appeared to say we don't think you need a FAR. I think you would have some natural tendency on the part of the people working on the FAR to question the need for a FAR. So there are a whole series of things. I think, that have impacted bringing this to a rapid conclusion.

Another thing I think is very important. When I came to OFPP 2 years ago, there was the FAR Council consisting of 10 agencies including OFPP. As you know, you can't work with a committee this large. As a result of the Executive order there are three agencies that have the responsibility for the FAR it's moving very rapidly right now.

Senator COHEN. Mr. Wright.

Mr. WRIGHT. Mr. Chairman, I'm sorry. I've got to be testifying over before Congressman Jack Brooks in about 10 minutes. So——

Senator COHEN. Well, let me say that you're handled much more gently here than you will be over there. [Laughter.]

Mr. WRIGHT. That's why I'm enjoying myself tremendously right now. [Laughter.]

Senator COHEN. I served for 6 years on that side of the Hill and I can forewarn you that you're in for a much tougher time. But feel free to leave, Mr. Wright. I have a few more questions for Mr. Sowle.

Mr. WRIGHT. I apologize. Mr. Sowle will go ahead and stay.

Senator COHEN. Oh, he's going with you?

Mr. SOWLE. No.

Mr. WRIGHT. No, no. He'll go ahead and stay here.

Senator COHEN. All right, fine.

Mr. SOWLE. I'd rather be here, Mr. Chairman. [Laughter.]

Senator COHEN. I'll just say, Mr. Wright, that I think even President Reagan now realizes that the ship of state is a rather large ship that takes time to move. And we're finding that even with these particular changes in the regulations, that I know that he must share the same frustration in trying to move it in a direction very quickly.

Mr. WRIGHT. I get the same frustration from him as I do from you over here.

Senator COHEN. Thank you, Mr. Wright. The effective date for the FAR is April 1, 1984. What authority does OMB have to rescind the current procurement regulations, either for Defense or the civilian agencies?

Mr. SOWLE. The Office of Information and Regulatory Affairs has the authority to approve all regulations before they become effective. All regulations providing for data collection must have an OIRA number.

As was mentioned previously, OMB and OFPP met with the three agencies having regulatory authority—DOD, GSA, and NASA. In the meeting, and based upon their schedule of having the FAR actually printed by October and fully implemented by April 1, it was agreed to publish the schedule in the Federal Register so that subsequent to April 1, 1984, the current regulations, unless they had an OIRA clearance, would no longer be applicable.

Senator COHEN. Isn't that kind of a circuitous route to follow, to go through OIRA? Wouldn't it be better just to give you regulatory authority?

Mr. SOWLE. Well, I would say that this one is a very effective one.

Senator COHEN. I'm sorry. I didn't hear that.

Mr. SOWLE. I said the OIRA announcement in the Federal Register and their authority is very effective.

Senator COHEN. Very effective.

Mr. SOWLE. Yes.

Senator COHEN. Now once the FAR is implemented, it's going to be maintained jointly by DOD, through its Defense Acquisition Regulation Council, and the civilian agencies, through the Civilian Agency Acquisition Council, chaired by the GSA. How are you going to resolve those disputes between the DOD and GSA?

Mr. SOWLE. Well, one way that we can resolve those today is for the agencies to refer them to OFPP for resolution which they say that they would do in certain circumstances.

Another way, of course, is for us to put out a policy directive which would resolve the disagreement. The agencies are required to follow policy directives and implement them with regulations when necessary.

Those are the two mechanisms.

Senator COHEN. I'm talking about after the FAR is implemented in April 1984.

Mr. SOWLE. It would be the same.

Senator COHEN. I'm told there's the FAR Council that would be organized to reconcile disputes between the defense and civilian councils. Is that right?

Mr. SOWLE. Yes; there would be two Councils. The Council would be made up of two coordinating efforts, one run by the General Services Administration and one by the Department of Defense.

Senator COHEN. Now would that Council have directive authority?

Mr. SOWLE. The Council would on regulations; yes, sir.

Senator COHEN. So it would have the authority to reconcile and resolve those disputes.

Mr. SOWLE. Yes, sir.

Senator COHEN. One final question, Mr. Sowle. Perhaps most fundamental to the execution of good procurement practices is the need for good people, competent people. There's no requirement that's more important, according to the GAO, and yet, none has been more neglected.

A preliminary GAO report of the procurement work force has found that the quality of the personnel has deteriorated over the past 2 years as evidenced by the following things: Lower educational standards among newly appointed contracting officers; difficulties in filling agency intern programs with qualified candidates; and complaints from procurement officials about the lack of skills of newly appointed personnel.

Again, in light of these findings, you'd have to question the initiatives that have been undertaken by the OFPP's Federal Acquisition Institute to improve the professionalism of the procurement work force.

Mr. SOWLE. Right.

Senator COHEN. What do you think about the effectiveness of the FAI so far?

Mr. SOWLE. I think the FAI has done an outstanding job. Their responsibilities, as you know from our own statute, are to coordinate with the agencies on career development programs, classification and qualification standards, and this sort of thing. The agency heads, again, have the responsibility for their own procurement work force.

We consider the procurement work force such an important area that it was included not only in our proposal to the Congress, but also in the Executive order. The necessity of having a professional work force, the fact that we have a lot of problems with the more professional of the work force leaving, and the inability to bring in the kind of people we need under the personnel rules, intern programs, and that sort of thing, are problems which we are seeking to remedy.

I consider these to be some of the most serious problems that we have, Mr. Chairman.

Senator COHEN. Mr. Sowle, just to go back. In other words, you agree with the GAO's findings.

Mr. SOWLE. Well, I don't know what their findings are. I saw no data. But the FAI has put out this kind of information over the years, pointing out what's happened to the work force. We have a major effort going, as you probably are aware, with the Office of Personnel Management, trying to assure that we get the proper classification and qualification standards for the procurement work force.

We're not even in this case asking for upgrading. We want to be sure that we don't lose any ground in the qualification and classification standards. This is a very critical area for us. And I think unless we have a professional work force, there's no way we're ever going to realize any lasting procurement reforms. Just no way.

Senator COHEN. One final point. You mentioned before in response to a question of mine that the FAR Council would have regulatory authority to resolve disputes between DOD, GSA, and NASA.

I have a copy of a memorandum of agreement between DOD, GSA, and NASA which says that the FAR Council will remain intact, to be convened from time to time to address appropriate matters. While it may serve as a forum for discussion and appeal of appropriate matters, it will not have directive authority.

Mr. SOWLE. Well, they have regulatory authority. I guess when you try to differentiate between directive authority and regulatory authority, it becomes a little nebulous. For example, we have directive authority in OFPP, but we do not have regulatory authority. They have directive authority insofar as those regulations are concerned. And they can put out regulations that will apply across the Federal Government as well as to the contractors that serve the Federal Government.

Senator COHEN. Well, according to this memorandum, the FAR Council will not have directive authority.

Mr. SOWLE. Well, I guess that's a point that I'm not making very clear.

Senator COHEN. I don't know what the distinction is. That's why I asked.

Mr. SOWLE. Well, it's a very fuzzy distinction. If they have authority to put out regulations, and those regulations require certain things, then that's a directive and in a sense directive authority. I don't know how to really describe that any better than that. But from that viewpoint, they do have directive authority.

Senator COHEN. So if you have regulatory authority, it's implicit that you have directive authority as well?

Mr. **Sowle**. I think that's implicit, right.

Senator **Cohen**. All right. And if you only have directive authority, you're really making recommendations, but have no regulatory authority to enforce them.

Mr. **Sowle**. Well, that's true. However, in our case, in OFPP, we have directive authority. If the agencies do not follow our policy directives and issue regulations contrary to our policy directive, OFPP would have to work with and through the Director of OMB to see that those regulations were rescinded. Obviously, that's a circuitous route, but in practice, you never quite get that far. We could talk with them and get things resolved.

Senator **Cohen**. Thank you, Mr. Sowle. I think that's all the questions we have for you. Thank you very much.

Mr. **Sowle**. Thank you, sir.

Senator **Cohen**. Thank you for your testimony.

[The prepared statements of Mr. Wright and Mr. Sowle follow:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

Hold for Release Until Delivery
Expected at 9:30 a.m., April 27, 1983

STATEMENT OF THE HONORABLE JOSEPH R. WRIGHT, JR.
DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
OVERSIGHT OF GOVERNMENT MANAGEMENT SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

April 27, 1983

Mr. Chairman, Members of the Subcommittee:

I am pleased to appear before you today to express the Administration's views on S. 1001, recently introduced by Senator Cohen and Senator Roth to reauthorize the Office of Federal Procurement Policy (OFPP) for an additional five years.

Introduction of S. 1001 in the Senate and H.R. 2293 in the House are positive steps. OFPP has proven to be a key element in the Federal procurement system. Maintaining the Office is essential to continued improvement of the procurement process and to furthering the initiatives begun by Reform '88 and Executive Order No. 12352. Mr. Chairman, I will focus the remainder of my testimony this morning on the specific questions which you addressed to me in your letter of April 11, 1983.

S. 1001 would not alter the Administrator's present authority. It would simply reauthorize the Office in its present form for an additional five years. We do not feel that some of the features of H.R. 2293 are necessary or desirable, a simple reauthorization leaves in place several specific requirements that have already been completed. I will address this point more fully later.

We also favor the five-year reauthorization over the three-year reauthorization proposed in H.R. 2293, because we believe the concept of the OFPP has already gone through a sufficient testing period. OFPP now needs the time to accomplish its mission on a sustained basis.

We prefer a five-year authorization over a permanent one, however, because we believe that a periodic review of the Office by both the Congress and the President is desirable. It not only provides an ongoing incentive for the Office, but it helps to assure that the Office continues in the direction that the Congress and the President intend.

Further, we believe that OFPP's present authority, as reflected in the 1979 Amendments to the Act and Executive Order 12352, should be extended -- with some clarification and one addition. The statute should give the Administrator leadership and directive authority in matters of Government-wide procurement authority.

In addition, the statute should authorize the Administrator to test new procurement techniques, as provided in our proposal for a Uniform Federal Procurement System, which was submitted to Congress in February of 1982. Such authority is necessary for procurement reform, because testing is needed to develop empirical data to show that the new procurement methods and procedures are viable and appropriate. Without this, changes will be much slower in coming to the procurement process.

With respect to regulatory authority, we do not seek such authority for OFPP because we believe that OFPP can function effectively without it. Strong management authorities exist now within OMB, and additional authority is not necessary in order for OFPP to fulfill its mission. We do not envision OFPP, with its small staff, becoming heavily involved in the regulatory process. On the other hand, we believe that the mere existence of regulatory authority could create unnecessary tension between OFPP and the regulatory agencies (i.e., DOD, GSA, and NASA).

Mr. Chairman, we do not support the codification in law of those agency management responsibilities which are set forth in Executive Order 12352. The thrust of the Executive Order was to pursue immediately those aspects of procurement reform which could be accomplished administratively, without need of legislation. Since the agencies are making progress in implementing the Order, no purpose would be served in repeating the same listing of responsibilities in law.

We believe OFPP has functioned quite effectively in fulfilling its statutory mandate. It has accomplished several significant tasks -- such as submission of the Uniform Federal Procurement System Proposal -- assigned to it by the 1979 OFPP Act Amendments. In addition, OFPP has been effective in providing the necessary leadership and policy direction required for procurement reform. The statute should, however, clearly give the Administrator directive authority to continue the improvements outlined in the UFPS proposal.

Finally, Mr. Chairman, we do have some specific suggestions with respect to S. 1001. First, those requirements of the existing Act which have already been completed -- such as submission of the proposal for a Uniform Federal Procurement System -- should be deleted by the reauthorization bill.

Second, we suggest that the bill provide for transfer of the Federal Acquisition Institute. As I am sure you are aware, the President's FY 84 budget provides for transfer of the Federal Acquisition Institute from the Office of Management and Budget to the General Services Administration. Our decision to seek this transfer was based on a careful review of FAI's mission.

FAI was established to be the interagency focal point for promoting and coordinating programs of research, education, training, and career development. We believe that the public interest would be better served if responsibility were assigned to a line agency, such as GSA, rather than to a staff agency like OMB, whose primary responsibility is to advise the President on budgetary and management policies.

Notwithstanding the above concerns, Mr. Chairman, we support S. 1001 and hope that the changes we have recommended will be adopted.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

Hold for Release Until Delivery
Expected at 9:30 a.m., April 27, 1983

STATEMENT OF THE HONORABLE DONALD E. SOWLE
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
OVERSIGHT OF GOVERNMENT MANAGEMENT SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

April 27, 1983

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here this morning to express the views of the Administration on reauthorization of the Office of Federal Procurement Policy (OFPP). I commend your initiative, Mr. Chairman, and that of Senator Roth in introducing this legislation and holding these hearings. This Committee plays an important role in procurement reform. The Committee was instrumental in 1973 and 1974 in enacting legislation to create the Office of Federal Procurement Policy, and again in 1979 in reauthorizing the Office.

The importance of the procurement reform effort is evident when we consider that Federal procurement accounts for 20% of the Federal budget. The volume of Federal procurement has nearly tripled in the last ten years -- from $58 billion in FY 1972 to $159 billion in FY 1982. Almost 19 million contract actions were taken in FY 82 by 130,000 personnel in approximately 12,000 procuring offices.

Several of the questions addressed to me, Mr. Chairman, in your letter of April 11 have already been answered by Mr. Wright. I will, therefore, concentrate my testimony this morning on the background, functions, budget and staffing levels of OFPP. I would also like to give you a brief status report on several major OFPP projects, such as the Federal Acquisition Regulation, development of the Uniform Federal Procurement System, and implementation of Executive Order No. 12352.

BACKGROUND

The Office of Federal Procurement Policy was initally authorized in 1974 for five years. OFPP was placed by statute in the Office of Management and Budget (OMB) and was given authority to provide overall direction of Federal procurement policy and to prescribe procurement policies, regulations, procedures and forms for the executive branch agencies. As established, the fundamental objective of the Office was to promote economy, efficiency, and effectiveness in government procurement.

The Congress reauthorized the Office for an additional four years in 1979 (Public Law 96-83, "The Office of Federal Procurement Policy Act Amendments of 1979"). The Amendments did not change the fundamental mission of the Office, but did rescind OFPP's authority to issue procurement regulations. The Congress also made it clear in the 1979 amendments that a new approach to Government procurement was needed. It directed the Office, as its first priority, to develop a comprehensive, innovative procurement system for the Federal agencies and a management system to ensure continued attention to the new procurement system.

BUDGET AND STAFFING LEVELS

Our budget and staffing levels have declined slightly over the past few years in accordance with this Administration's pledge to reduce the overall costs of Government. Our FY 80 budget was $3 million, with 49 full-time equivalent staff; the numbers for FY 81 were $2.6 million and 48 full-time equivalent staff. In FY 82, our budget dropped to $2.4 million and 45 full-time equivalent staff; while in FY 83, we have an estimated budget of $2.5 million and 42 full-time equivalent staff members. I believe OFPP is able to operate effectively at these levels.

ACCOMPLISHMENTS SINCE REAUTHORIZATION

I would like to touch on what I consider our major accomplishments since our reauthorization.

From October 1980 to December 1982, OFPP devoted a substantial part of its resources to the development, submission and initial implementation of the new procurement system called for by the Congress and to the development of the Federal Acquisition Regulation (FAR). First, I would like to address the proposal for a Uniform Federal Procurement System (UFPS).

The Uniform Federal Procurement System (UFPS) - An Umbrella for Procurement Reform

> The 1979 Amendments directed OFPP to submit a proposal for a uniform Federal procurement system within one year and a proposal for a central management system and any legislative changes relating to these systems within two years.
>
> The UFPS proposal that was submitted to Congress was developed around four basic themes:

- o Uniform Government-wide procurement policy and improved procurement management, with provisions for decentralized operations and flexibility to meet unique agency requirements.

- o A simplified procurement system that is responsive and provides timely results.

- o Effective competition, with latitude for innovation.

- o "Professionalism" in the procurement work force, with emphasis on initiative, judgment, responsibility and accountability.

The development of the UFPS was a very worthwhile effort. It is an important and integral part of OFPP's plans and enhances OFPP's ability to carry out its basic mission of promoting economy, efficiency, and effectiveness in Government procurement. The UFPS is a blueprint for procurement reform which will continue to guide OFPP's efforts and agency procurement operations in the future.

Executive Order No. 12352 -- Federal Procurement Reforms

In March 1982, following submission of the UFPS, the President issued Executive Order No. 12352 on procurement reform. The Executive Order is the keystone of the Administration's program to reform Federal procurement practices, in concert with a broader management reform program -- Reform '88. It essentially directs that those aspects of procurement reform found in the UFPS proposal which could be accomplished administratively be carried out without waiting for legislation.

Executive Order No. 12352 requires the heads of the agencies, under OMB's leadership, to accomplish specific fundamental reforms in Federal procurement. It also requires the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration to continue their joint efforts to complete the Federal Acquisition Regulation. Finally, it requires the Director of the Office of Personnel Management (in consultation with agency heads) to ensure that personnel policies and standards for classification and qualification meet the agencies' needs for a "professional" procurement work force.

OFPP is leading and coordinating implementation of the Executive Order through an Executive Committee on Federal Procurement Reforms, which is made up of the eight largest procuring agencies, plus the Small Business Administration and the Office of Personnel Management. The Executive Committee, which is chaired by OFPP, formed six interagency task groups to develop specific recommendations, guidance and supplementary materials for agencies to follow in making fundamental reforms. The task groups' assignments were to:

- Develop a model charter for Procurement Executives (Task Group 1);
- Establish clear lines of contracting authority and accountability (Task Group 2);
- Improve procurement system performance (including establishing criteria for enhancing competition and for evaluating system performance) (Task Group 3);
- Reduce administrative costs and burdens (Task Group 4);
- Simplify small purchases (Task Group 5); and

- Establish career management programs that will result in the highly qualified, well-managed professional procurement work force that is essential to the achievement of procurement reform (Task Group 6).

OFPP provides a staff member on each of the inter-agency task groups to assist in these efforts and to help ensure proper interface among the task groups.

It should be noted that the efforts of these task groups to simplify the procurement process and reduce administrative burdens will particularly benefit small and minority businesses.

Federal Acquisition Regulation (FAR) -- Primary Procurement Regulation

The second major effort which has required OFPP's resources is development of the FAR. Public Law 93-400 required the Administrator to develop a system of simplified, uniform procurement policies, regulations, procedures, and forms. OFPP initiated the FAR project in January of 1978 and has provided policy oversight and assistance throughout its development.

The FAR will consolidate the Government-wide procurement regulations into a single, simplified regulation, which will make it easier for Government and industry to conduct business. Consolidation of the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation -- the three primary procurement regulations -- into one regulation will reduce the volume of those regulations by over 60% and will set the stage for eliminating approximately half of 64,000 pages of secondary and lower level regulations.

The FAR is now in the final stages of its development. As I noted above, Executive Order No. 12352 directed DOD, GSA and NASA to continue their joint efforts to complete this regulation. A copy of the FAR was printed in December 1982, as required by the Executive Order and agreed to in a Memorandum of Understanding among the three agencies. The December 1982 printing was distributed as a planning document to the agencies for final review and use in restructuring agency supplemental regulations.

The FAR will be printed in the Federal Register in September 1983, and will become effective on April 1, 1984. The Office of Information and Regulatory Affairs will publish a Federal Register notice soon which will have the effect of binding DOD, GSA, and NASA to implementation of the FAR by April 1.

Other Activities

Other important projects that OFPP has undertaken include:

- Revision of OMB Circular No. A-76 and the Cost Comparison Handbook. This Circular covers the Government policy of reliance on private enterprise for commercial goods and services.

- Continued work on recommendations of the Commission on Government Procurement.

- Improvement of the Federal Procurement Data System. OFPP chairs an interagency Federal Procurement Data Advisory Board, which has been working since 1976 to design, operate and continually improve the FPDS.

- Issuance of a Government-wide policy on debarment and suspension of Government contractors.

- Implementation of P.L. 95-507, the amendments to the Small Business Act, which enhances subcontracting opportunities for small and small disadvantaged business.

OFPP PLANS -- LONG AND SHORT RANGE

Since its inception, the Office of Federal Procurement Policy has proven to be -- and should continue to be -- a key element of the Federal Government's procurement and management system. OFPP has a vital role in the procurement reform process, which is an important element of the President's Reform '88 program. Much of OFPP's resources will be devoted to realizing the procurement improvement initiatives begun by Reform '88 and Executive Order No. 12352.

OFPP's long-range plans include continuing its leadership in developing new procurement policies and procedures and identifying the legislation needed to improve the procurement system. We will work to ensure that the procurement function is given proper recognition for its role in accomplishing agency missions, and we will continue to monitor the functions of Procurement Executives in the agencies. (Executive Order No. 12352 directed the appointment of Procurement Executives in all of the agencies as the focal point for management of the procurement function; 45 have actually been appointed.)

OFPP will also continue its leadership role in connection with issuance and maintenance of the FAR, which is an integral part of procurement reform. An OFPP report, which will be submitted to Congress shortly, details numerous other projects that have been completed or are being undertaken, as well as our plans for the future.

CONCLUSION

We appreciate the introduction of S. 1001 to reauthorize the Office of Federal Procurement Policy. OFPP recognizes the special authority and responsibility given to it by the Congress and the leadership role that it is expected to fill in improving the Federal procurement process. We accept the challenge and accountability inherent in this authority. We will continue our dedicated efforts to work diligently and prudently toward that goal. We also appreciate the continued support of the Congress and its commitment to improving the Federal procurement process.

Mr. Chairman, I would be pleased to answer any questions you may have.

Senator **Cohen**. Our next scheduled witness was to be Mr. Fettig. But we're going to pass over Mr. Fettig for the time being since Senator Chiles is not here yet. He would like to have the opportunity to introduce Mr. Fettig. We'll move to Mr. Hugh Witt, who is chairman of the council on procurement policy, U.S. Chamber of Commerce.

TESTIMONY OF HUGH E. WITT, UNITED TECHNOLOGIES CORP., CHAIRMAN, COUNCIL ON PROCUREMENT POLICY, U.S. CHAMBER OF COMMERCE

Mr. **Witt**. Thank you, Mr. Chairman. It's a pleasure to be here. I don't spend as much time up here as I did when I was with the Government, which has some advantages, I might add.

I will cut down on the size of the comments, although we did make them relatively short, because I realize that you do have some time constraints, Mr. Chairman.

So I'm speaking today as a representative of the Chamber of Commerce of the United States, as chairman of the chamber's council on procurement policy. That council has been following, naturally, the Office of Federal Procurement Policy the last several years because of our interest in procurement across large and small firms who do business with the Government.

As you know, I was also the first Administrator of the Office of Federal Procurement Policy from 1974 to 1977, which was a stimulating experience, I might add.

I am accompanied today by Christine Russell, our legislative counsel of the chamber's center for small business, who is right here in the front row.

My purpose today is to express the chamber's support for the reauthorization of the Office of Federal Procurement Policy. The chamber, as you know, has 220,000 members. It's the largest federation of business and professional organizations in the world and is the principal spokesman for the American business community. And I would also add that 90 percent of the chamber's members are small business firms.

I won't go through the background here since you certainly are aware of that. I'll just get to the questions, if it's all right with you.

Should the OFPP be reauthorized in its present form? If so, for how many years? And should it be a permanent office?

As I said, we strongly support the reauthorization of the Office of Federal Procurement Policy. And later I will deal with changes in the present authorities and so forth. We do feel that it should be authorized for a minimum of 5 years. A couple of reasons: First, they do have a comparably small staff, looking at the size of the total Federal Government. And dealing with the reauthorization every few years certainly dilutes the energies of any group of that type and detracts from performing its regular functions. Especially as you have emphasized, the need to get the FAR underway.

I think a reauthorization of at least 5 years would help put stability into the office.

Also, I found when I was interviewing people from good solid Government jobs and that would say, well, are you going to be out of business in a few years? It certainly didn't help to try to hire good people. We were able to get excellent people, but it made it that much tougher with this threat hanging over you all the time.

So I would plug for 5 years, certainly.

We don't feel that the present authority needs to be changed for reasons contained in our response to the next question.

Should the OFPP have regulatory authority, as provided in the 1979 amendments? And if so, what specific role should the OFPP serve in issuing regulations?

We strongly endorse reinstating the regulatory authority of the Office of Federal Procurement Policy. I think it would enhance and strengthen the ability to lead the various Government agencies in developing procurement policy.

Should they have testing authority and so forth? We feel that it would be appropriate for them to supervise or monitor tests of any innovative concepts which are presented. They would serve in a leadership role and utilize, of course, the larger resources, expertise, and so forth, of the executive agencies.

I found, Mr. Chairman, while I was there that there was a certain amount of head-on collision between the Congress's first idea of having a small expert office, consisting of excellent procurement people, and at the same time, the Congress seemed to expect an awful lot out of a handful of people, if you will. So if the Congress wants to keep it a relatively small operation, they are going to have to rely on the Office to be in a leadership role, to be collecting people of the other agencies, making sure that they get started on a task and then follow up as they go along. There's no way that you can spread that handful of people over all the different issues that the various groups across both Houses of the Congress would like to see done.

Other authorities which you feel the Office of Federal Procurement Policy should have? No; I think if the regulatory authority is reinstated, that would solve the basic problem.

As far as codifying the agency management responsibilities which are contained in Executive Order 12352 of last March, I don't think it's necessary. If you have a reauthorized Office of Federal Procurement Policy, I think that would basically take care of that question.

And also, I would emphasize here that it is very important that the Administrator of this Office have the full backing of the Director of the Office of Management and Budget. This is a very key point, a very key point, Mr. Chairman.

Senator COHEN. Did you find that in your experience?

Mr. WITT. It took a certain amount of education.

Senator COHEN. On whose part?

Mr. WITT. On my part.

Senator COHEN. Oh.

Mr. WITT. It's a shock to any agency which has not had any major violent changes to its organization for some years, such as OMB, to suddenly insert, if you will, a new group into that organization, particularly with the responsibilities as set forth by the Congress. Namely, you kind of wear two hats, if you will, reporting to you people up here, and also report to the director, who reports to the President. You inserted a man at a very high level, and he was suddenly charged with reporting both ways.

So they were a little nervous, needless to say, about having this new entity included in the organization chart.

Senator COHEN. And how did you get educated?

Mr. WITT. No; I say I did the educating. It took a lot of just constant dealing with the people on the issues as they came up and explaining that the Congress had decided that procurement was more important than a lot of other functions in the Federal Government. In their wisdom, Congress had decided that there would be an office at the highest levels and that they would look out for the procurement community and they would try, certainly, to improve the procurement processes.

And to do that, the office had to be placed at a high authority. The Congress, as you perhaps know, reading the history, were nervous about having the new office buried somewhere. At the same time, they wanted to make sure it was a Presidential appointee, so that they, the Congress itself, could, in effect, get a handle on it, run them by here so that you could look them over, any new Administrator.

So it was a very new and a strange, in many ways, relationship. I had come through the defense side of the house, as you perhaps know. I have been with the Air Force and the Navy, and the Secretary of Defense's office. And I knew a lot of the nervousness that prevailed over there in the largest department in the Government.

So I think I was in a pretty good position to understand their problems. But I had to explain to the new Director, Mr. Jim Lynn, who had just come on board then, and to the old timers who were there, where we fit in, how we could make the procurement process work better, and that we were not there to cause trouble.

Senator COHEN. Is it fair to say that there's a natural resentment from the intrusion of what is seen as congressional intervention into the management affairs of the executive branch?

Mr. WITT. Absolutely.

Senator COHEN. And that's going to be there, inevitably, no matter what happens. There's always going to be that kind of pressure.

Mr. WITT. No question about it. But it does put the Administrator in a rather difficult position many times.

Senator COHEN. So it would be all the more important to give the OFPP Administrator even greater authority in terms of dealing with regulation, for example.

Mr. WITT. The agencies must know that it's an important office, that the Administrator has the backing of the President and the Director of OMB. That's very important.

Senator COHEN. I had a somewhat similar experience going way back when I was on the city council of Bangor, Maine. This is perhaps a microcosm of what happens in the rest of the country, where the city council, which is the appropriating authority, became concerned about the size of the education budget. Each time that the city council cut the education budget, the people in the Department of Education stopped mowing lawns and they stopped driver's education. It was that sort of crossfire going back and forth between the two groups.

So one way to resolve that, they thought at that time, was to put me on the school board. I was on the city council and chairman of the appropriations committee, at the time. [Laughter.]

When I went to the first meeting of the school board everybody walked out because I was seen as the enemy and a spy within the middle of that organization. So it took a good deal of my time to try and persuade them that we're really after the same thing; that is, to spend money in the wisest possible way.

But I assume that's the same sort of reception that the OFPP must have received by the Director of OMB at that time.

Mr. WITT. Exactly. I must say, it was like playing leapfrog with a unicorn. [Laughter.]

Senator COHEN. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Mr. WITT. Well, it has been effective. I think it can be more effective. The Office, as I think Mr. Sowle stated, has been serving a useful function. It has been improving the procurement process. It's very important to have a single contact point at the highest levels of the Government, Mr. Chairman, and they have served that purpose. Industry has been able to take a number of issues to them over the years and present them at a high level as necessary.

Instead of going from one agency to the other trying to get some sort of a uniform position, they did have a focal point. And I notice also that more legislation which is coming out now ends up by saying, this will be implemented by the Office of Federal Procurement Policy. In the past, they had to leave it rather loose as to which agency in the Government would be doing the implementing. And those kinds of things are important, as far as I'm concerned.

Senator COHEN. I think what's interesting about your testimony is that you've had considerable experience in the Government and now are in the private sector. You're like Tiresias, the old blind seer, but had the advantage of having been both a man and a woman during the course of his life, and therefore, had a perspective both from the female and male side of life and a greater sense of wisdom.

So I'm asking you, I guess, now coming from the private sector, after all of your experience in the Government, what is the single biggest complaint that the private sector has in doing business in the procurement field with the Federal Government?

Mr. WITT. Well, let's see. How long do we have? [Laughter.]

Senator COHEN. I think you mentioned it before and that is the different agencies that one has to deal with, each one having conflicting requirements.

Mr. WITT. The lack of uniformity, there's no question about that. And the problem, of course, of dealing with the Government is the huge mass of regulations that you have to deal with. I've been impressed by dealing with the commercial side of our corporation and then dealing with those sections of the corporation which deal primarily with the Federal Government.

The commercial people are generally much leaner, less overhead. They don't require as much automatic data processing equipment. They don't have to have as many specialists in dealing with the Government. People who have expertise in filling out forms and dealing with the huge mass of constrictions in the Federal procurement.

I think, at last count, there were over 80 separate restrictions built into the procurement process, everything from buying jewel bearings from the Indians in North Dakota to all the restrictions that you have in dealing with small business. I'm not saying they're all bad. I'm just saying they're there.

A man dealing on the commercial market, he doesn't have to provide huge masses of cost data and so forth like you have to in the Government.

We should never be surprised that something should cost more for the Government than it should be for the commercial side, let's say, because of the regulatory process and the time constraints, et cetera, that you have to go through.

Senator COHEN. In view of the fact that you see the OFPP as really being that single focal point where the private sector can turn to for some source of uniformity, why not make the authorization permanent?

In other words, we've gone from a 5-year authorization initially to a 4-year authorization. What does 1 year give you above the 4 years? Why not just make it permanent?

Mr. WITT. Well, when I was with the Government, my general feeling was that a lot of those offices should be made permanent. Once you get on the outside, you begin to wonder about the moss that grows on the agencies, if you will.

I think it's healthy about every 5 years that the Congress hauls them over here and says, hey, what have you been doing? Are you worth the taxpayer's dollar? And I don't think any group should be inviolate.

Senator Cohen. Thank you very much, Mr. Witt.

Mr. WITT. Yes, sir.

Senator COHEN. Your testimony has been very helpful.

[Mr. Witt's prepared statement follows:]

Chamber of Commerce of the United States of America
Washington

STATEMENT
on
REAUTHORIZATION OF OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP)
before the
OVERSIGHT OF GOVERNMENT MANAGEMENT SUBCOMMITTEE
of the
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Hugh Witt
April 27, 1983

I am Hugh Witt, Vice President for Government Liaison of United Technologies Corporation. As Chairman of the U.S. Chamber's Council on Procurement Policy, I am here today representing the Chamber of Commerce of the United States. I also served as the first Administrator for the Office of Federal Procurement Policy (OFPP) from 1974 to 1977.

I am accompanied by Christine A. Russell, legislative counsel of the Chamber's Center for Small Business. My purpose today is to express the Chamber's support for the reauthorization of OFPP.

The U.S. Chamber, with 220,000 members, is the largest federation of business and professional organizations in the world, and is the principal spokesman for the American business community.

More than 90 percent of the Chamber's members are small business firms having fewer than 100 employees. Yet, virtually all of the nation's largest industrial and business concerns are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

BACKGROUND

In 1969, Congress created the Commission on Government Procurement to study all aspects of procurement by the Federal government, and to make recommendations for increasing economy, effectiveness and efficiency in the procurement of goods and services. This Commission submitted its final report in 1972, recommending that an Office of Federal Procurement Policy be established to provide uniform direction for procurement by all Federal agencies. In response to this recommendation, Congress passed the Office of Federal Procurement Policy Act (P.L. 93-400) in 1974, establishing OFPP in the Office of Management and Budget. The Office was reauthorized for four years in 1979 and has continued to seek improvements in the Federal procurement process.

RESPONSE TO COMMITTEE QUESTIONS

The following are our answers to questions posed by the Committee.

(1) Should the OFPP be reauthorized in its present form? If so, for how many years? Should the OFPP be a permanent office?

We strongly support the reauthorization of OFPP. In subsequent questions we will deal with changes to OFPP's present authorities. The Office should be reauthorized for a minimum of five years.

The Office has a comparatively small staff, and the dealing with reauthorization on a short-term basis dilutes its energies, which are needed to perform its principal functions, especially the implementation of the Federal Acquisition Regulation (FAR). A reauthorization of at least five years would contribute stability to the office. For example, the hiring of high level personnel would be much easier since they wouldn't have to be as concerned about job stability.

(2)(A) Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP act, be extended?

No, OFPP's present authority needs to be changed for reasons contained in our response to the next question.

(B) Should the OFPP have regulatory authority, as provided in the 1979 amendments to the OFPP Act of 1974. If so, what specific role should the OFPP serve in issuing regulations?

We strongly endorse reinstating the regulatory authority of the Office. It would enhance and strengthen OFPP's ability to lead the various government agencies in developing procurement policy.

(C) Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory small purchase procedure and socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

It would be appropriate for them to supervise or monitor tests of such innovative concepts in a leadership role utilizing the larger resources and expertise of the executive agencies for the actual testing operations.

(D) Are there other authorities which you feel the OFPP should have?

No, if the regulatory authority is reinstated, nothing else is necessary.

(3) Should Congress codify agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

This is not necessary, since a reauthorized OFPP would have these responsibilities.

(4) Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Yes. The Office has played a vital role in improving the procurement process. It has served as a single contact point for the business community on procurement issues within the Executive branch.

OFPP has served as a focal point for the development of procurement policy, and as the motivating force for development of the Uniform Federal Acquisition Regulations (FAR), which should be issued this year. FAR will provide, for the first time, a uniform system of procurement regulations for all agencies, which will be supplemented only with essential additional agency provisions.

CONCLUSION

Government procurement has a major effect on the nation's businesses, their employees, government employees, and on a broader level, all American taxpayers. The policies ultimately adopted not only immediately affect the expenditure of billions of dollars of taxpayer's money each year, but also will influence the government's procurement practices for years to come. OFPP's reauthorization is necessary to provide an efficient and effective procurement system.

Senator COHEN. We will go on to Prof. John Cibinic from George Washington University National Law Center. You've testified many times before this committee. Mr. Robert Wallick and Sparks Hiestand, who are representing the public contract law section of the American Bar Association, will also testify on this legal panel. Mr. Hiestand was the counsel to the Commission on Government Procurement.

Professor Cibinic, you have, as I've indicated, provided invaluable testimony before this subcommittee on a number of issues, including hurry-up spending and the Competition in Contracting Act, and we look forward to hearing from you today.

TESTIMONY OF JOHN CIBINIC, JR., PROFESSOR OF LAW, NATIONAL LAW CENTER, GEORGE WASHINGTON UNIVERSITY; ROBERT D. WALLICK, STEPTOE & JOHNSON, CHAIRMAN, SECTION OF PUBLIC CONTRACT LAW, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY O. S. HEISTAND, LAW FIRM OF MORGAN, LEWIS & BOCKIUS, FORMER COUNSEL TO THE COMMISSION ON FEDERAL PROCUREMENT

Mr. CIBINIC. Thank you, Mr. Chairman. I share your hope for procurement reform becoming a reality in our lifetime. [Laughter.]

And I also wish to commend you and your staff for the efforts that you have done in putting procurement reform back in focus. If it hadn't been for your efforts in this area, a lot of things that the executive branch has done would never have been accomplished.

Senator COHEN. Thank you very much, Professor. Interestingly, I spoke to a group the other day and the man who was about to introduce me said, well, what can I tell them about you? What are some of the legislative initiatives you're working on? I said, well, how about competition in contracting? He said, well, that's not a terribly sexy thing to be talking about. [Laughter.] And this is a group of businessmen, now. [Laughter.]

He didn't seem too intrigued about that and we ended up talking about something else, the nuclear freeze movement or something. But there hasn't been a whole lot of interest in this field of procurement in Government contracting. Yet, that's where the biggest portion of our dollars are spent. And perhaps that's the reason why few people have shown much interest over the years in trying to do something which may take maybe a decade before it's finally implemented and you won't see the results for another decade.

It's like planting a tree. If you want to plant something for a year, you plant grain. If you want to plant something for a decade, you have to plant trees.

Mr. CIBINIC. Right. I've been doing some work for the Forest Service, and they plant a lot of trees and we see a lot of results from it. So that, hopefully, we'll get some growth.

I would like to summarize my statement by saying that I think we need an Office of Federal Procurement Policy for many of the reasons which have come out in the testimony already. The executive branch just has not shown the inclination to undertake continued procurement reform without a strong mandate from Congress and a congressional requirement. That has been proved over the years.

I think that they're making steps in that direction and Executive Order 12352 is a step. But we've always seen steps that lead sometimes to a little bit of tiring under the burden or attention going elsewhere.

The continuation of this Office is essential.

However, I have a problem in permanence and my problem in permanence is that the past record of this Office cannot be considered to be an unqualified success. I do not think that they have performed their major function, which is effective leadership in procurement reform.

As my statement indicates, there are a number of reasons for this. One of them, obviously, was the initial reluctance of the OMB to have the Office created. Hugh Witt did a great job of convincing them that once the Office was created, it should be continued. Then, there have been too many changes in Administrators over the short period of time that the Office has been in existence.

I am also of the belief that they have not had a sufficient staff to do the work that has been required of them. Finally, in the latter stages of the Office, the lack of regulatory authority has hurt the Office. And in addition to that, I think that the opposition of the Department of Defense from the beginning and which is continuing has also impinged on the effectiveness of the Office.

Senator COHEN. Would you elaborate on that? What sort of opposition have you perceived over the years?

Mr. CIBINIC. Well, matters of record——

Senator COHEN. I think we should point out that you also have served in the Government.

Mr. CIBINIC. I've worked in the Government. I've worked in the Department of Defense for a number of years and still do work with quite a few of the agencies in the Department of Defense.

The creation of the Commission on Government Procurement, which was previous to the Office of Federal Procurement Policy, was initially opposed by the Department of Defense. Then, the Department of Defense opposed regulatory authority in the office and has opposed a number of matters undertaken by the Office of Federal Procurement Policy.

For example, my prepared statement indicates that one of the major shortcomings of the Office of Federal Procurement Policy is the Uniform Federal Procurement System, which wasn't uniform in that they were proposing conforming statutes. That was not originally what the Office of Federal Procurement Policy proposed. However, the Department of Defense indicated that if two conforming statutes were not proposed that they were going to back out of sponsorship.

Another area that is almost tragic as far as the time spent in the area and the amount of cost involved has been the delay in issuing the FAR. Don Sowle testified that the earlier estimates just didn't estimate the magnitude of the project. My feeling is that they didn't estimate the magnitude of the Department of Defense foot-dragging that would be involved in the project and the creation of what I consider to be somewhat of a Rube Goldberg device for getting the FAR implemented and out.

I hope that it's not some cruel joke that the date for implementation of the FAR that's finally been agreed to is April 1.

Senator COHEN. Well, as you know, April is the cruelest month. [Laughter.]

Mr. CIBINIC. Those two particular actions stand out, in terms of opposition by DOD during the period of time that the OFPP has been created. I think that with regulatory authority and with the proper sense of mission, the implementation of the FAR would have occurred long earlier. If the FAR does ultimately become implemented on April 1, 1984, the continuation of the FAR and the management of the FAR would be much more efficiently done if the Office of Federal Procurement Policy had regulatory authority.

Senator COHEN. What do you think about the OFPP proposal for a Uniform Federal Procurement System which includes an exception to competition where the agency head determines that competition is impracticable?

Mr. CIBINIC. Well, my feeling is that that allows too much leeway. There is the ability to characterize anything as impractical. And I think that that concept has probably been too much abused. There may be some other terminology, such as severe injury to the national defense or to the Federal Government. It might be a reason not to get competition. But just impracticable is just too broad.

Senator COHEN. We've already got that exception.

Mr. CIBINIC. Yes; I know. That's an exception I think that probably—they say, well we need because we can't think of everything. Well, obviously, that severe injury exception would allow you to use noncompetitive procurement if it were necessary. Otherwise, why should you do it? Merely because it's impracticable? I don't know what that means, and I don't think anybody else does, either, and that's the problem with it.

So I would support the regulatory authority and I have some qualms as to whether you should even reauthorize the OFPP without regulatory authority.

Senator COHEN. Can OFPP have the regulatory authority without a larger staff and a bigger budget?

Mr. CIBINIC. Well, I think that 15 very effective professionals could monitor the policy areas and maintain a Federal Acquisition Regulation. The area of procurement is broad, but it's not that broad. Fifteen professionals, each with an area of expertise, would be supported by a very, very small staff. I would say maybe two or three staff members working for each one of them.

So you would be talking about 45 people in the professional area. To me that is not a monstrous budgetary responsibility. And it seems to me that what one ought to do is to look at the savings that would result if you did have that type of capability in OFPP. We could take the FAR Council activities and far reduce them and use that body as a basis for the agencies to get policy suggestions to the Administrator of the OFPP. But the Administrator of the OFPP would have his or her own experts in the procurement area.

Senator COHEN. Are you saying, then, or suggesting that the Administrator of OFPP now is incapable of resisting or dealing with the pressure generated by the Director of OMB in order to carry out what otherwise would be a sound procurement policy?

In other words, OMB has said that OFPP doesn't need regulatory authority. We can work well within the existing system. We can reconcile whatever differences there are.

So far, the administration supports the reauthorization of OFPP, but without regulatory authority. You come out in favor of regulatory authority, as does the chamber of commerce. Why is the administration objecting to the regulatory authority?

Mr. CIBINIC. Well, I think that it probably has something to do with the fact that the regulatory authority is not given to the Director of the Office of Management and Budget. Basically, the directive authority in the present statute is given to the Administrator of the Office of Federal Procurement Policy with the concurrence of the Director of the Office of Management and Budget.

And, of course, I see that as a mechanism whereby the Department of Defense, with the great amount of power that it wields within the administration and otherwise, to, in effect, oppose any regulation that the Administrator would want in an effective, legal way.

Associated with that is the other aspect of the Office of Federal Procurement Policy that you brought up earlier in Mr. Witt's testimony, and that is the continued responsibility to report to Congress.

It seems to me that vesting the regulatory authority in the Administrator and continuing the reporting to Congress would assure that a single agency within the executive branch would not be able to so easily thwart policymaking decisions coming from that procurement professional.

Senator COHEN. Let me read the last paragraph of Mr. Thayer's letter from which I was reading earlier. The full text of this letter will be included in the record. I don't know if you were in the audience when I read the Thayer letter earlier.

Mr. CIBINIC. No; I have not seen the letter.

Senator COHEN. In this letter, Mr. Thayer expresses some concern about the regulatory authority being granted to the OFPP Director:

> I agree that a central office should exist within the government to provide broad policy guidance on procurement matters. However, I am also aware that it is almost impossible to draw a distinct line between the role of such an office and the roles of agencies with contracting responsibility, and that, as a result, disagreements will occur from time to time. These should be resolved within the executive branch. When the office is a creation of the Congress, there could be a tendency for congressional committees to weigh in on these matters.

I think that probably reflects what you've been saying.

Mr. CIBINIC. I think so.

Senator COHEN. What about the level of the Administrator's position within the executive schedule? As I understand it, the Administrator is now a level 4. Is that consistent with his responsibilities? Should it be upgraded to 3?

Mr. CIBINIC. Well, I guess grade creep is a problem. But, yes, I think so. I have not been privy to all of the high level meetings within the executive branch. But within the pecking order, some of the people that the Administrator must deal with, I think, are a little higher in the pecking order and that creates some degree of problem, as well as the fact that it is a very important and very challenging job. And sometimes, you are what people perceive you to be. And if people perceive you to be a lower level functionary, in their minds, that may be what they treat you as.

And I think that the office is an important one and it ought to command that type of respect.

Senator COHEN. Mr. Wallick.

Mr. WALLICK. Thank you, Senator Cohen. I appear here today as chairman of the Section of Public Contract Law of the American Bar Association. With me, as you noted, is my long-time friend, Sparks Hiestand, who is the past chairman of the section and formerly General Counsel of the Commission on Government Procurement.

We appear here today by designation of the president of the American Bar Association, and we want to first express the American Bar Association's strong support for reauthorization of the Office of Federal Procurement Policy.

I have a higher regard for its achievements than Professor Cibinic. I believe it has been more of an effective leader than some realize. I think there are a couple of things when we speak of reform that we should remember. One, there are legitimate disagreements as to what is reform. And one man may see something as reform and another may not. They can have a legitimate difference. Second, the process is incredibly complex and time consuming. I think, realistically, reforms are going to come incrementally if they're going to be well received and well carried out. I wish OFPP had done more, but I think under its four directors, it has indeed achieved a good bit.

We also support renewing the authority for 5 years. Others have expressed the reasoning—both Professor Cibinic and Hugh Witt, and I agree with the feeling—that a longer duration would be desirable, but that it should not have an indefinite life. We would also like to express our strong support for providing it directive authority with respect to regulations as well as to procurement policies, forms, and procedures.

We'd like to note that the agency, OFPP, did have this. It was not a problem, to my observation and our observation, that procedures had been worked out—that we're not going to trample on the legitimate concerns of the agencies. But the choice really comes to whether you're going to have a mediator or you're going to have a leader, as we see it.

Now this does not mean that every agency and every contract would have to conform to some sort of rigid, abstract requirements. Just as Congress should provide adequate flexibility to the executive branch in how procurement is conducted, OFPP must prescribe policies and regulations in a manner that accommodate legitimate differences in types of products and services required or available to meet the agencies' needs.

Restoring the directive authority which OFPP originally had would enable OFPP to make or cause to be made needed improvements in Federal procurement. However, OFPP's role as the focal point has, in truth, been diffused. The assignment of responsibility for issuing procurement policies and regulations to the three major agencies by Executive Order 12352 has put the contracting agencies back where they, in truth, are in charge of this process and has caused a growing perception that OFPP is just not worth bothering about. So I share Professor Cibinic's concern about what OFPP could accomplish in a renewed period without this regulatory authority.

Among the objections to restoring OFPP's directive authority are suggestions that this would affect the jurisdiction of the House and Senate Armed Services Committees and create another layer of bureaucracy.

We submit that these allegations are mistaken. They ignore the basic findings of the Government Procurement Commission, and they ignore experience during the 5 years that the Administrator has had or did have directive authority.

I would like to also note that in my experience, the Department of Defense is not and has not been recalcitrant on procurement reform. The Department has, in fact, in many areas, been a leader. I point to Secretary Carlucci's initiatives as a good example of this. Seeking to encourage reform on a Government-wide basis, as this bill does, would be no threat either to the Department of Defense or the congressional committees with responsibility in this area.

I would like to note that there is no evidence that OFPP failed to adequately consult with and consider the views of all contracting agencies when it did have the directive authority with respect to regulations.

The position of the Administrator is a Presidential appointment, and we would like to see it upgraded. Although DOD is the largest procurement agency, there's no more reason to exempt its procurement functions from the administration policies and regulations—that these would be adversely affected—than there is for excluding contracting agencies whose activities are subject to oversight by other committees.

I'd like to give a personal comment, that a fundamental concern of OFPP has been the upgrading of the performance of the contracting function within the Federal Government. In my observation, the Federal Acquisition Institute has been an almost essential arm of OFPP in carrying out these efforts. And I believe it would be a mistake if the Federal Acquisition Institute were not continued as an arm to assist OFPP in carrying out that very central objective of all of us who are interested in improving procurement.

The need for OFPP is as great now as it was in 1974. Central executive branch responsibility and leadership for developing procurement policies and regulations and for monitoring ongoing procurement operations is essential to improving the procurement process.

In our written presentation to the questions you gave us, Senator, we addressed many other aspects and would be glad, Mr. Hiestand and I, to address any questions or concerns that you might have.

Thank you.

Senator COHEN. Thank you very much, Mr. Wallick. Mr. Hiestand, did you have a statement that you would like to make?

Mr. HIESTAND. No statement.

Senator COHEN. Professor Cibinic, I saw you wince visibly as Mr. Wallick talked about DOD's initiatives. I must say that many of the Carlucci initiatives were, in fact, a very positive contribution to procurement reform. There is question, however, as to what the effectiveness of those initiatives have been to date. As a matter of fact, a number of articles have been written in the Wall Street Journal questioning whether DOD has, in fact, reformed its procurement policies consistent with the goals expressed in the Carlucci initatives. So it's questionable how much impact the Carlucci initiatives have had even though I would commend Mr. Carlucci for his efforts.

But you did wince, and I thought maybe you would want a chance to clarify that.

Mr. CIBINIC. My wincing was not because I have opposition to any one of the initiatives or any one of the items that you read from Executive Order 12352. My problem is that business very often goes on as usual because these reforms don't always find their way into the regulations which the people work under in the day-to-day procurement area, the DAR and the FPR, soon to be replaced by the FAR.

That was my only comment.

Mr. HIESTAND. Mr. Chairman, if I could.

Senator COHEN. Mr. Hiestand.

Mr. HIESTAND. I'd like to add a comment to that because in my experience, and I don't know what the names would all be, but if you go back enough years, you'd probably find that in each administration, one way or another, and particularly the Defense Department, there's been some kind of initiatives or new policies that get issued and state "now we're going to straighten procurement out."

So I can go back 35 years and I can probably find something for every administration. Part of the problem is that they're sincere. They believe in it, and they put a lot of resources and people to work on that. But they end up—nothing ever happens. And that was why, and I can take it up in 1970, when the members of the Procurement Commission had seen all this and said, we've had enough. It's time we've got to quit doing that sort of thing.

Senator COHEN. I would agree with you that each new administration comes in with a remarkable new plan to reform the procurement system. And somehow, that system or that ship of state is so large and the bureaucracies or the agencies within them are so entrenched that they tend to resist any change. I must say that even though we've had inititatives taken in DOD, there have not been any initiatives in the area of increasing competition until Congress started to complain. And even now we are still finding resistance. Last year we reported the Competition in Contracting Act out of the Governmental Affairs Committee, but we couldn't get through the Senate Armed Services Committee. I happen to serve on both, and I found it somewhat frustrating that I couldn't move one through the other.

So now we're going to have hearings in the Senate Armed Services Committee and hopefully come up with a recommendation which supports it.

Mr. Wallick.

Mr. WALLICK. Yes. I'm not here to defend the Department of Defense. It's quite capable of defending itself, Senator.

Senator COHEN. That's what's in question. [Laughter.]

Mr. **Wallick**. My point is, and I agree with what has just been said, I think the Department of Defense does want to improve itself and does want reform at various levels. I don't believe that they can achieve it the way all of us want it to without the assistance of an OFPP. And it should not be viewed as a threat to the Department; indeed, DOD ought to welcome OFPP to assist it in achieving its own goals.

Senator **Cohen**. The Commission on Government Procurement recommended that a central procurement policy office was needed in the executive branch that was independent of any agency having procurement responsibility. Objectivity requires, a separation of policymaking and operational concerns and biases. How do you achieve a completely independent agency to make this kind of evaluation? Is that unrealistic, Mr. Hiestand?

Mr. **Hiestand**. I think in terms of what the Commissioners were trying to say, and I noticed that Senator Chiles just came into the room so he can probably answer the question better. He was in a lot more of their discussions and debates than I was, although I attended very many of them.

Senator **Cohen**. Senator Chiles has been waiting since 1972. [Laughter.]

One more minute, Senator Chiles, and we'll have you up here.

Mr. **Hiestand**. But, yes, in terms of what they were thinking about and certainly this is expressed, I think, very well in the letter that Jim Webb wrote to you, Senator, in response to your questions as to how you get to a group that is at a high enough level in the executive branch and reports essentially to the President and has his full backing to accomplish two things: To make sure that the policies are coordinated and make sense and are fair; and recognize the other side of the picture, that in procurement, you're not regulating in the sense that you're passing rules on the outside people, but you're trying to run your own house to decide how you can get procurement done in the most efficient and effective way to serve the functions of the executive branch.

So it's an unusual kind of situation. So that's what they were doing. And they've seen all the experience and, of course, those were men that had served running major agencies, been deputy secretaries and a lot of high, responsible jobs. They were saying, it does not exist.

Now, in that sense, and I think someone said it's still a test maybe of how is the best way to do it. There was a lot of discussion about whether it should be set up as an independent agency. And there was a lot of thought that it could never succeed if you do that because somehow it's going to have to be set in a method that everybody's going to understand, it reports pretty directly to the President and then has all of the services of what are otherwise now the OMB—I think back then we were still BOB—that it could assist, and, that OMB could assist it in accomplishing a very complex job.

So it was to be a policymaking level position that both by statute and by its backing of the President, that could bring some order and logic into what was being done in the procurement area.

Senator **Cohen**. Does giving the OFPP regulatory authority enhance its independence that the Commission originally envisioned?

Mr. **Hiestand**. Well, certainly, in my opinion, that's exactly what the Commission was saying, that the Administrator should have the authority to issue and prescribe procurement policies and regulations. Even in those days I'm sure we were thinking that we would no longer have a DAR and a FPR. We were looking down the road to a body that would issue a Government-wide procurement regulation.

Senator **Cohen**. Gentlemen, thank you very much.

[The prepared statements of Messrs. Cibinic and Wallick follow:]

Prepared Statement of Prof. John Cibinic, Jr.

Mr. Chairman, thank you for giving me the opportunity to present my views on this matter. You and your staff are to be commended for bringing public attention to the need for procurement improvement and reform and for the responsible legislative proposals which you have introduced. The proposed reauthorization of the Office of Federal Procurement Policy continues in this fine vein. However, I am convinced that our common desire for a permanent ongoing procurement reform program will never be achieved unless it is directed and led by an effective high level policymaking office within the executive branch. It is for this reason that I stongly support the reauthorization of the Office of Federal Procurement Policy and the restoration of its original regulatory powers. I hasten to add that my support for reauthorization is not based upon the past accomplishments of that office but rather upon the hope and belief that it can, in the future, perform this very important mission.

In preparing for my testimony I reviewed presentations which I made almost ten years ago, on July 12, 1973 before the Subcommittee on Legislation and Military Operations of the Committee on Government Operations of the House of Representatives and on November 1, 1973 before the Ad Hoc Subcommittee on Federal Procurement of the Committee on Government Operations of the Senate. The occasion of that testimony was consideration of the legislation which created the Office of Federal Procurement Policy. Unfortunately, the needs and problems identified in those hearings remain unresolved. The procurement agencies have not been and cannot be expected to be a meaningful source of procurement reform. Their energies must of necessity be channeled to make procurement decisions on a day-to-day basis and working within the framework of existing laws and regulations. In addition, there is a need to coordinate and direct the policies of many divergent agencies so that there is uniformity when necessary and desirable and that differences between agency regulations are justified by valid mission accomplishment reasons and are not the result of biases of the personnel or agencies involved. Executive Order 12352, while a step in the right direction, does not address these problems.

Although the Office of Federal Procurement Policy has performed some of its undertakings successfully, it has never achieved the role of leadership envisioned for it by the Commission on Government Procurement and the Congress. It would be impossible to single out any one cause for this failure. The initial reluctance of the Office of Management and Budget to take on this responsibility, the absence of a procurement professional in the Administrator's position until the present incumbent, the lack of a sufficient number of highly qualified staff members, and the continued opposition of the Department of Defense all took their toll. In my opinion, the low point was reached in 1979, when, based on an appraisal that the Office had lacked focus and direction in its initial authorization period, Congress concluded that its regulatory authority should be taken away and that the Office should be directed to devise a Uniform Procurement System. An already weak Office of Federal Procurement Policy never recovered from this drastic surgery. It is unfortunate that this occurred at a time when the relations between the Office of Federal Procurement Policy and the Office of Management and Budget were at their cooperative best, with the Office of Management and Budget recognizing both the need for the Office and for its regulatory authority. This of course was a marked change from the Office of Management and Budget position when the Office was created. Thus, it is very important that reauthorization be accomplished in a manner that will permit the office to function in the desired manner and that the Administrator and his superiors in the Office of Management and Budget know what is expected of the Office.

The first and most important factor is the need for authority to issue regulations. The issue of regulatory authority has been a recurring and controversial issue. The major opponent of regulatory authority being vested in the Office of Federal Procurement Policy has been the Department of Defense. Indeed, the Department of Defense originally opposed the creation of the Office. However, its position changed and it "supported" the creation of a small office without regulatory authority. This continues to be the Department of Defense position, and it undoubtedly has had considerable influence on the present Office of Management and Budget position on regulatory authority. It is my belief that the Office of Federal Procurement Policy cannot perform its leadership role in the executive branch without the authority to promulgate procurement regulations and that the removal of regulatory authority in the Office of Procurement Policy Act Amendments of 1979 by Public Law 96-83 was a mistake. The lack of regulatory authority has contributed to several of the Office of Federal Procurement Policy's major shortcomings, the long delay and high cost of promulgation of the Federal Acquisition Regulation, and the ineffective Proposal for a Uniform Federal Procurement System.

I strongly urge the restoration to the Office of Federal Procurement Policy of the regulatory authority originally granted in Public Law 93-400. I do not believe that the provisions for prior notice and hearing of the Administrative Procedure Act should be made applicable to regulations promulgated by the Office, including the Federal Acquisition Regulation. The procedures currently adopted by the Office under Section 6(d)(2) of the original Act and 6(d)(3) of the 1979 Amendments are more than adequate. I believe that the Office has done a fine job here, including the commentary which accompanies final promulgation. Application of the Administrative Procedure Act requirements would unduly complicate and delay the issuance of regulations. The Office of Federal Procurement Policy's specific role in promulgating regulations would be to decide, on its own initiative or upon requests of procurement agencies, contractors or the public, when to add, delete or make changes in the Federal Acquisition Regulation. I also believe that the final drafting of the regulations should be accomplished within the Office. The printing and the distribution of the regulations would, of course, continue to be accomplished in the Government Printing Office or some appropriate printing facility.

In order to perform its leadership function, the Office of Federal Procurement Policy must be sufficiently staffed by highly qualified procurement professionals. The reliance on borrowed expertise from the procurement agencies of the farming out of projects to the agencies may be appropriate in unusual situations but should not be the normal operating procedure. It is only with such a staff that the Administrator can operate effectively. Congress should provide sufficient funding so that personnel with expertise and experience can be recruited and the Office of Management and Budget should be advised of the importance of the proper grade levels necessary to obtain the requisite staffing.

In making proposals to Congress, the Office should present sufficient information for making informed decisions on statutory changes. For this purpose, the Office should be authorized to grant waivers from statutes and regulations for purposes of testing innovative procurement techniques or changes to established techniques. These waivers should be granted by the Administrator and should clearly delineate their scope and length. Reports of the deviations granted and results of the tests should be submitted to Congress annually. I believe that this authority is integral to the leadership role of the Office of Federal Procurement Policy and should not be performed in a Federal Acquisition Institute or delegated to another agency. The actual test procurements would be made by the various procurement agencies.

With these expressions of congressional policy and with the restoration of regulatory authority, the Office of Federal Procurement Policy stands a good chance of being a successful force for procurement reform even with the continued opposition of the Department of Defense. Without them, I can only see it performing a minor stabilizing role. Perhaps it would be worthwhile to keep the office for that purpose. I wish that after 10 years I could recommend that the office be established permanently. However, the past record of the office requires me to recommend that they be reauthorized for a period of five years. A shorter period of time would not allow sufficient data to be available to make a reauthorization decision.

PREPARED STATEMENT OF ROBERT D. WALLICK

Mr. Chairman and members of the subcommittee, my name is Robert D. Wallick. I am chairman of the Public Contract Law Section of the American Bar Association (ABA). With me is O. S. (Sparks) Hiestand, past chairman of the Section, and formerly general counsel of the Commission on Government Procurement.

By designation of Morris Harrell, President of ABA, we appear before you today to express ABA's strong support for the reauthorization of the Office of Federal Procurement Policy (OFPP).

The Public Contract Law Section has closely monitored the progress of OFPP since it was established in 1974 by Public Law 93-400 and reauthorized in 1979 by Public Law 96-83. We appeared before Congress on both occasions to support the establishment and reauthorization of OFPP.

Earlier this month ABA responded to a letter from Senator Cohen regarding the reauthorization of OFPP, and requesting ABA's position on specific matters. I assume the Senator's letter and ABA's response have been made available to this Subcommittee, and I will summarize the ABA response.

The ABA endorses the reauthorization of OFPP and recommends a five-year extension. We also support restoring to the Administrator of OFPP the directive authority contained on the OFPP Act of 1974; that is, the Administrator should have the authority to prescribe procurement policies, regulations, forms and procedures applicable to all Executive agencies.

We noted this does not mean that every agency and every contract must confrom to a uniform requirement. Just as Congress should provide adequate flexibility to the Executive Branch in how procurement is conducted, so OFPP must prescribe policies and regulations in a manner that accommodates legitimate differences in types of products and services required or available to meet the agencies' needs.

With respect to granting OFPP authority to test "innovative procurement techniques," we noted that if Congress only prescribed fundamental procurement policies which can be implemented by policies and regulations consistent with the statutory framework, authority to test innovative techniques was not necessary. In this connection waiving existing restrictions on procurement such as socio-economic thresholds and set aside programs does not involve procurement techniques.

As to other authorities that OFPP should have, we believe that restoring the directive authority OFPP originally had would enable OFPP to make or cause to be made needed improvements in federal procurement. However, as presently constituted, OFPP's role as the "focal" point has been diffused. The assignment of responsibility for issuing procurement policies and regulations to DOD, NASA and GSA, by Executive Order 12352, has put the contracting agencies back in charge and caused a growing perception that OFPP is not worth bothering with.

Among the objections to restoring OFPP's directive authority are allegations that it will affect the jurisdiction of the House and Senate Armed Services Committees, and create another layer of bureaucracy. We submit these are red herrings that ignore the basic findings of the Procurement Commission and experience during the five years that the Administrator had directive authority. The need for OFPP is as great now as it was in 1974. Central Executive Branch responsibility and leadership for developing procurement policies and regulations and for monitoring ongoing procurement operations, is essential to improving the procurement process. Further, there is no evidence that OFPP failed to adequately consult with and consider the views of all contracting agencies when it had directive authority. The position of Administrator is a Presidential appointment requiring Senate confirmation. Although DOD is the largest procurement agency, there is no more reason to except its procurement functions from the Administrator's policies and regulations than there is for excluding contracting agencies whose activities are subject to oversight by other committees of the Congress.

Our response to Senator Cohen's letter also identified a number of other issues that the committee may wish to consider. These are: (1) The procedures for issuing procurement policies and regulations; (2) a statutory policy of reliance on the private sector for furnishing goods and services; (3) the size of OFPP; and (4) the grade level of the Administrator in the Executive schedule.

Mr. Chairman, this concludes may prepared remarks. We would be glad to answer any questions the members of the Subcommittee may have.

Senator COHEN. Senator Chiles is going to be introducing Lester Fettig, who will testify next.

Senator Chiles, I know you've been interested in this matter since I think you were appointed to the Commission on Government Procurement, which made the original recommendation to establish a central procurement policy office. We have made some progress, but, as you know, it's been slow.

TESTIMONY OF HON. LAWTON CHILES, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. Thank you, Mr. Chairman. It is a pleasure to be here. Your focus this morning on the reauthorization of the Office of Federal Procurement Policy offers me an opportunity to officially welcome you to the world of Federal procurement. I feel compelled to tell you that in the over 10 years that have passed since I served on the Procurement Commission and since Sam Ervin set up my first chairmanship, which was an ad hoc subcommittee on procurement, that later I was able to finagle into making a permanent subcommittee, there have been a number of times this subject matter has hurt my head. And I'll tell you that walking across Florida, or your walking across Maine, as you did in your congressional race, was a heck of a lot easier than trying to bring reform to Federal procurement practices.

I can't think of a better set of running backs to carry the ball now than yourself and Senator Levin. I caution you, however, that touchdowns don't come very easy or too often in this game. It's one of inches, I think, and it's maybe 2 inches forward and 1 inch back, and then you try to move the ball again.

Senator COHEN. Well, we want you to serve as John Riggins. [Laughter.]

Senator CHILES. Procurement is now a $159 billion a year business. If you make a 1-percent saving, you're talking about $1½ billion. That alone makes it very critically important work.

I want to do two quick things this morning, Mr. Chairman. First, I want to personally introduce Les Fettig to the subcomittee. I want to recommend him to you. Second, I want to make a brief pitch for restoring directive authority to OFPP. I think that's what you're calling regulatory authority.

Senator COHEN. We were confused about that, Senator Chiles, trying to get some definition as to what's directive and what's regulatory.

Senator CHILES. Well, you're the chairman and if you want to call it regulatory authority, I'll call it regulatory authority. I looked at it as the directive authority before.

I met Les Fettig when he was a staff member of the Procurement Commission in 1971. He was instrumental in putting together the Commission's recommendations on how major weapons systems should be bought. I hired him in 1973 as a staff director to that ad hoc subcommittee. He later became the staff director of the permanent committee. He helped draft the original OFPP legislation and in 1977, President Carter appointed him OFPP Administrator, where he served until 1979.

He left that, ventured into politics, and then got into the consulting business.

I think he has been a major architect during the last decade in reforming the Federal Government's $159 billion a year procurement business. He has worked on a number of those issues and certainly had a lot to do with the Committee on Governmental Affairs' heritage in Federal procurement policy.

So I recommend him to you.

Let me turn to a gut issue on reauthorization.

Should we restore the regulatory authority originally provided in the 1974 act? If the Office of Federal Procurement Policy is going to be a focal point for congressional oversight of congressional policies, if we do want to standardize and simplify agency buying regulations to reduce paperwork and encourage more competition, more small business participations and increase the competitive basis, and, if you want to resolve wasteful agency turf wars that arise, then I think the Administrator must have regulatory authority, or directive authority, as a needed tool.

Without it, I don't think OFPP is considered a credible actor in interagency activities. We saw some memoranda passed at the time that authority was deleted, and it was just so true, not only from the memoranda, but the action which took place later. You could see that other agencies quit having to really pay attention to the Administrator because he lost his authority.

And you asked the question, a very insightful question, I think, of the Procurement Commission's recommendation that OFPP be an independent agency, and why wasn't that followed to start with? We wrestled with that for a long time. I was one of the ones that had come down on the side of it being an independent agency. But as we came to grips with trying to formulate the legislation, really, what we came down to was: What kind of clout would the office have if we didn't house it somewhere where there was already some clout? If we just made it an independent agency, we knew it really wasn't going to have the voice of the President. That was just asking too much to think that you were going to have that.

So the reason we decided to put it into OMB, and that was a decision I made, it was the only way that you could attempt to have some clout. We did try to make it a Deputy Director. We tried to say that it reported directly to the Congress, as well as to the administration. All of that, again, was trying to do everything that we could to give additional clout to the Administrator. And, of course, then we gave it directive authority.

That has always been the rubbing part as far as the other agencies are concerned. They don't want that. They want to be able to continue those wars forever or to say that, ultimately, disputes just don't get decided that way or they get muted out some way. They often prefer an environment where there can be no clear kind of decisions made.

What the Procurement Commission concluded in 1972 was there was a need to raise the visibility of the procurement function with a strong central manager, and I think that's just as valid today—I know it is—when you see what has been accomplished and what has not been accomplished, as it was the day it was made.

In the 1979 reauthorization, the House view prevailed. It narrowed the OFPP focus and intended the Office to concentrate on developing an executive branch consensus on a uniform procurement code proposal to be submitted to us in 3 years. We meant that mission to be consistent with the Procurement Commission's No. 2 recommendation, a proposal which would consolidate the two generic statutes, the Armed Services Procurement Act of 1947, and title III of the Federal Property and Administrative Services Act.

That standard has not been met. I consider that a failure.

I suspect that one of the major reasons that OFPP did not have the ability to succeed, was because they lost that directive authority, they lost that regulatory authority. They could not really bring the parties together and hammer out a change.

The agencies saw the last reauthorization bill as weakening OFPP, and they had 3 years to sort of dig in and wait until the crunch came at the end.

The question in my mind now is: If we don't go back to the original OFPP model, I wonder whether we need an Office of Federal Procurement Policy. I really do, because I don't know what it can accomplish. Maybe it could be put into something else or maybe it should be just a branch of OMB.

You'll often hear from top management in OMB that they don't need a strong OFPP because they have enough clout. They said that when OFPP was created, that they didn't need it. And I understand that Joe Wright has made that statement again.

I always love that one. If you have time, stop and think what it really means. When was the last time that someone in the executive branch genuinely complained that Congress had given him too much power to fight the battles to get the job done? I can't remember.

Members of this committee have repeatedly asked, and I have many times, what happened to the M that we put in OMB? Sometimes I think it ought to be the Office of Budget, because I can't find much in the way of management that goes on in there and that was one of the things, of course, that we hoped the Office of Federal Procurement Policy would be helping put some reason for there being an M in there—that you're going to manage.

How, for example, is an OFPP Administrator's directive authority going to hurt this administration's efforts to achieve reform 88 initiatives? It's going to help! And moreover, you can ask your former administrators this—I can't think of an occasion where the directive authority was used contrary to the wishes of either the director or the deputy of OMB. That probably is not going to happen. It's not going to be used contrary to their wishes. He's housed there. But at least there was some clout there when directive authority was there.

The Department of Defense is going to resist the directive authority. A major reason is that OFPP is, among other things, a congressional creature that facilitates and encourages more congressional oversight And I agree with that, even if the oversight comes from committees other than Armed Services, and I think it's a good thing, not a bad.

Second, Defense does not like someone who might be as close to the President as they are on some of these issues to be able to make decisions and arbitrate. Again, OFPP tends to have an overall perspective, more like the President, than a functional agency perspective. I think that strengthens the President's hand and, again, I think that's a good thing.

We have heard everybody say, we're going to do something about controlling the waste or mismanagement or buying practices or lack of competition or everything else in the Defense Department and nothing seems to be done or no one really has the feeling that that's done. Goodness knows, what's wrong with having an agency that does have some expertise, that does have some clout, being able to look at those areas, especially where there are turf battles going on.

Finally, I want to offer you any assistance I might be able to give as you proceed with this. I sponsored OFPP in 1974. I kept the Carter boxshufflers from abolishing it in 1977. We helped to reauthorize it in 1979. And it's a continuing battle. At times, as I say, I wonder whether it's worth the battle. But I think the reason for the Commission's statement of why we needed this central office is as valid, or more so, today, than it was then in 1972. The bucks are so much larger, and I think it's still something that we have to try to see if we can bring about.

I wish you Godspeed in your task.

Senator COHEN. Thank you very much, Senator Chiles. I'd like to say that the committee would like to have whatever help it can have, hopefully on the Senate floor when this matter comes up and certainly before the full committee.

Senator CHILES. You'll have it.

Senator COHEN. A couple of points. You mentioned the management in OMB. I stated earlier that OMB circulars are not easily enforced. An example is the circular issued in 1921 by the Bureau of the Budget which prohibited agencies from spending too much money in the last quarter of the fiscal year.

Senator CHILES. Yes.

Senator COHEN. That was ignored totally and OMB, not once during that 60-year period, ever tried to enforce it, until we started holding hearings about hurry-up spending. And now, thanks to the OFPP Adminstrator, we've had a lot of help on that.

Senator CHILES. Right.

Senator COHEN. We've had some resistance, as you know, to the reauthorization of the Office of Government Ethics.

Senator CHILES. Sure.

Senator COHEN. This doesn't depend upon party. Republicans and Democrats alike do not want any intrusion into executive branch authority.

Senator CHILES. Well, it's obvious that there was always a tremendous problem that was created by the fact that the Administrator reported and had to make a report to the Congress as well as to the President or to OMB. That was terrible. And that always made, I think, the Administrator suspect. But goodness knows if this isn't an area that we shouldn't be in and that we shouldn't be concerned and trying to provide, knowing that we're providing some kind of oversight in this area I think is terribly important.

So it's interesting to me to see what's happening in the House, where the House was for refocusing the Office in 1979. I understand the House now wants a strong Office. So that, again, as you say, it switches parties and it switches houses, what the feeling is.

Senator COHEN. Thank you again for your testimony, and I'm sure that Mr. Fettig appreciates it. Mr. Fettig, where are you? You've been sitting here all this time and waiting. We look forward to your testimony.

TESTIMONY OF LESTER A. FETTIG, MANAGEMENT CONSULTANT

Mr. FETTIG. Thank you, Mr. Chairman. It's more than a pleasure to be here. It's like old times waiting for my former Chairman to go between Government Ops, as we used to call it, and the Budget Committee, and Defense Appropriations. It's really an honor that he took the time to do it.

By way of introduction, I will synopsize my remarks and make them brief, but there are some things that I do want to say by way of introduction.

First, let me extend a very, very sincere appreciation to you for holding these hearings. You're probably not aware of it, and I don't know what good it will do you in Maine, but those of us who pay attention to the Senate and Senators have come to call a group of you sort of the "Good Government Group." After last year——

Senator COHEN. Do you put out a rating list? [Laughter.]

Mr. FETTIG. It's not a long one, sir, as you know. Last year, Senator Danforth sat back and rolled his eyes and reminisced about the mythology of Sisyphus constantly rolling the boulder up the hill.

You, Senator Chiles, Senator Levin, are all to be honorably anointed as "Honorary Sisyphi," I guess it would be, for keeping to work on the boulder. We have made progress, and I think the testimony will reflect that.

I also want to say by way of introduction that Senator Chiles passed a remark to me that if I hadn't overused that OFPP authority so much, we wouldn't have this problem now.

I'm appearing today as an individual. I've literally spent a career in procurement—defense procurement in particular. I just wanted to be clear that what I have to say today reflects no interest other than a vital one in the over 10 years I've spent in procurement. I have no clients that I represent before either the executive branch or the Congress. But I'll tell you, if you try to explain U.S. procurement policy when British companies are told to get involved in NATO cooperative efforts, you get a further perspective on just what a tragedy we face sometimes.

As far as the specifics of OFPP, I'll go a bit further than hedge; I will recommend for the committee's consideration that you not reauthorize OFPP without restoring its directive and, literally, regulatory powers.

Nobody ever had in mind a gentle policy overseer casting gentle eyes over the contract plantation and rocking on the OMB porch. That was never envisioned and, indeed, as the years have gone by, as Senator Domenici and Chiles, I'm sure, will agree, there's not a nickel we can afford to pitch away carelessly. And if we ever could, we certainly today can't afford to pay just for bureaucratic icing or other policymaking bodies. On the point of that regulatory authority, I would call to your attention two points.

First of all, it's absolutely essential. To reinforce what Mr. Witt said, I had a relatively better set of circumstances. From having worked up here in staffing Defense Appropriations with Senator Chiles and defense issues on the Budget Committee, I had a very good working relationship, not only with the people in defense circles here on the Hill, but also the appointees when President Carter put us in place.

We accomplished a lot. But nevertheless, even with the regulatory authority, and even with the good support and friendship of Dr. Perry at that time and John White, who became Deputy OMB Director, there were many occasions where the agencies can still resort to a preemptive authority. Even with OFPP regulatory authority, there's going to be a phone call to the OMB Director—for a brief time it was Mr. Lance and then Mr. McIntyre—with the Secretary of Defense, Harold Brown, saying, "I don't want to do this." What happened was that we had to reach an agreement. If you're going to expect anything to happen, OFPP needs a regulatory authority.

Second, I want to emphasize the point that because of that pecking order, the regulatory authority is really no threat in any sense. I used a meteorological analogy in my written statement that if you want an office to move on with a program, you'd better give it ballast when placed in the middle of competing weather fronts.

To use a military analogy, that OFPP Administrator is facing heavy armor all the time. And without the regulatory authority, even as a threat of a precision-guided munition, even for deterrence, the warring factions will roll right over no man's land and literally, the Administrator can't function.

The effectiveness issue I want to address in a larger sense and, if you'll pardon me, I want to cut through to the heart of some motivations and the bureaucratic, institutional incentives that we have to face here.

What's happening in Federal contracting is a microcosm of what I could enumerate as probably a half dozen major management breakdowns in the Federal Government. As I said in my statement, every year makes it harder and harder for any President, any leadership in this country, on both ends of Pennsylvania Avenue, to manage the Federal bureaucracy.

In systems engineering, if you know the laws of thermodynamics, you face the problem of something called "entropy," constant disillusion. We know as engineers that we can provide pockets of order, but——

Senator COHEN. Does that happen to the body, too? [Laughter.] I've felt that way for the past 5 days.

Mr. FETTIG. You sound very much like Senator Danforth. We could be saying the same things and having this same hearing over Federal grants management, for example.

There's an enormous amount to be accomplished, but the root problems are any President wanting strong tools to manage a bureaucracy, any congressional leadership wanting strong tools to manage it.

I have to say also that in the Defense Department, when you can tap the professionals and overcome the institutional jealousies that too often come to the fore, you have an outstanding record. I couldn't have started the FAR project. Indeed, we could have finished it on schedule, if it hadn't been for the abrupt denuding of OFPP authority. But I couldn't have started it without the agreement of the Defense Department. We had outstanding people, 40 people that were put in an office—Navy Capt. Vince Pistolessi, and Col. John Slinkard from the Air Force led them. Excellent people.

But what's happened in part is the fault of the Congress. The Defense Department sees OFPP as a Trojan horse and particularly now from some hordes that they have learned not to love very well in the Governmental Affairs and Government Operations Committees.

That has to be overcome and the most delightful thing about this hearing is your comembership on Armed Services—you and Senator Bingaman and Senator Levin and Senator Nunn. That could be the key to moving more than 2 inches forward and 1 inch back.

I know for a fact that Senator Tower, Senator Goldwater, are fine gentlemen and they understand the problems. I think the reason that we made so much progress earlier was because I had on my subcommittee Senator Nunn and Senator Glenn, as well as Senator Chiles on Defense Appropriations.

Please exercise that connection because there's no doubt in my mind that with responsible Sisyphi such as yourself, both committees can honestly take some leadership here and say, in both committee jurisdictions, we have some enormous progress that we can make if we can set an agenda.

To conclude, that agenda should be the strong reauthorization of OFPP, with regulatory authority. And second, to set the wheels in motion to clean up the statutory framework that continues to impede and worsen every year.

Again, congratulations. Many of these folks in the audience are "contract junkies," so to speak, and they may not appreciate, as I do, how many different people want a piece of your dissolving body every day. I truly mean it— congratulations for putting effort into an often not very rewarding area. We all appreciate it.

Senator COHEN. Well, I thank you for your testimony and all of you contract junkies out there, that's the first time that I've been named to the honorary membership of the Sisyphus Club. [Laughter.]

As you know, in classical literature, Sisyphus was a very tragic figure. But I am reminded that, I think it was Albert Camus, one of the great existentialists who said, "The Struggle to reach the top is itself enough to fulfill the heart of man. One must believe that Sisyphus is happy." [Laughter.]

So I take my daily sustenance to prevent this constant dissolution of the body and mind that I face every day to say that I am happy in my pursuit, even though recognizing its futility from day to day. And that's the way in which we carry on, I guess.

A couple of quick questions. One of the most often cited arguments against regulatory or directive authority being located in OFPP is that there are potential abuses. What would those potential abuses be?

Mr. FETTIG. A potential abuse would be, I think—I'll take a concrete example. In the Small Business Act amendments of 1978, I believe they were, the Congress decided that Federal contracting could be used as a more forceful tool to encourage our small business community, with a lot of technological overtones.

OFPP, with regulatory authority, could have intervened, despite any agency objections, including the Small Business Administration, to thwart and otherwise deflect the intent of the Congress, in crafting those regulations. That's always a possibility.

As I said earlier, the natural appeal, if it's important enough, is for the SBA Administrator or the Secretary of Defense to get on the phone to the OMB Director.

On the other hand, what actually happened was SBA was foot-dragging; indeed, they were in violation of the law, did not put out any implementing regulations. At that point I used the deterrence of my regulatory authority to say, if you don't get on with it, then here's a draft set of regulations that will be issued.

Prompt action was forthcoming and we were all relieved that we didn't have to face again Parren Mitchell, Joe Addabbo, and I believe at this time, Senator Weicker, who were riding the administration hard.

So it's a two-sided coin.

Senator COHEN. Well, I don't want to disillusion you any more about the progress we've made in terms of the dual roles that we serve. We have on this committee Senator Levin, Senator Bingaman, Senator Nunn, and myself, all of whom serve on the Armed Services Committee.

But I recall the difficulty that we had last year in trying to get a 10-day extension for a notice requirement in the Commerce Business Daily to advertise prospective contracts. That was fought almost 2 years in the House-Senate conference, with opposition coming from DOD to any 10-day extension for the CBD notice to allow people enough time to read the solicitation for bids and have time to put a bid together. This would, in turn, contribute toward increasing the competition in contracting.

And yet that was fought for almost 2 years and I don't know—did we finally get it through? We still haven't gotten it through.

So even though we have four members on this committee on the Armed Services Committee, we are not always successful. But I think there has been a change somewhat in the composition of Congress. I think that more and more people are concerned about how we spend money—whether we have effective debarment and suspension proceedings, whether we can deal with hurry-up spending, and ultimately, whether we can stimulate competition in Government contracting.

So, Mr. Fettig, I appreciate your testimony. It was not only colorful in terms of taking us from aerodynamics back to classical literature, but into the military jargon as well. It was most interesting.

Thank you.

Mr. FETTIG. Thank you very much. I appreciate it.

[Mr. Fettig's prepared statement follows:]

Prepared Statement
of
Lester A. Fettig

Former Administrator
Office of Federal Procurement Policy
and
Staff Director
Senate Subcommittee on Federal Spending Practices

Before the
Subcommittee on Oversight of Government Management
Senate Committee on Governmental Affairs

Thank you for inviting me to appear again in a familiar setting. As OFPP Administrator between 1977 and 1979, I had numerous occasions to come before this committee and its subcommittees. Moreover, as the Staff Director of a predecessor subcommittee from 1973 to 1977, I was privileged to play a role in the complete range of procurement reform initiatives under then-Chairman Lawton Chiles — including passage of the original Office of Federal Procurement Policy Act in 1974.

I will address my remarks to subjects suggested by the committee:

(1) OFPP reauthorization;

(2) OFPP authorities;

(3) Codification of Executive Order 12352;

(4) OFPP's effectiveness.

I will also respond to your invitation for other comments by adding some closing perspectives on OFPP in the context of government management, generally, and the Defense Department in particular.

I must first extend a note of gratitude to the Chairman, Senator Cohen, for even holding these hearings. The tough work of government management reform doesn't lure all members of Congress. It is difficult, arduous and doesn't lend itself to more simple forms of political reward and government-by-press-release. You and your Ranking Minority Member, Senator Levin, are following in a fine tradition of Senators some of us have come to refer to as "The Good Government Group." Senator Danforth last year likened himself to Sisyphus pushing the rock uphill. Senator Chiles for five years pushed that boulder, as did Senators Roth, Weicker and Nunn — together an outstanding bi-partisan group of young dedicated members.

Those of us interested in substantial government management reform owe you all a special note of thanks. As for Sisyphus, we can probably take heart that we are gaining altitude because the breathing seems to be getting harder on the part of those who would like to see that boulder rolled back downhill.

Reauthorization of OFPP

With all the talk now about "testing" of new contracting methods, perhaps it's well to observe that OFPP itself was and is a test. It was established on a "Sunset" basis to see whether it could serve a worthwhile purpose.

I would be surprised if the committee's hearing record did not support a unanimous conclusion that, on balance the Office has been quite worthwhile. Some will criticize what more could have been done, some will say perhaps it did too much — venturing too far into sensitive matters. But, in the final analysis, business, labor, executive departments, non-profits and OMB itself would have to fairly admit that there have been improvements in Federal contracting which would likely not have come about without OFPP, substantial ones.

One thing the committee should keep in mind, however: Whether or not to REauthorize OFPP depends on what AUTHORITIES it is newly given. Because of the restrictions placed on the Office in the 1979 reauthorization — and the notable difference in OFPP's momentum and role since then — the committee should NOT reauthorize the Office unless it intends to have a strong, active agent of change and reform.

In my view, having been debating OFPP for over a decade since the Procurement Commission first proposed it, just another high-level "policy making" body gently overseeing the contract plantation from the OMB porch is not what people had in mind.

Further, every nickel we carelessly pitch into the Federal deficit should be put back in the Treasury's pockets. It's only several million dollars in this case, but I don't think we can afford to pay for anything but the most effective offices. We cannot and should not pay for layers of icing on the bureaucracy. We can't afford it, as Senators Chiles and Domenici will agree.

As for the period of reauthorization, five years was orginally judged appropriate and remains so. Any less and the Office is consumed with short-term planning and justifications. Any more and you lose the pressure for performance. OFPP should definitely not be permanently authorized. The discipline of a "Sunset" authorization is highly beneficial. It gives any OFPP Administrator the ultimate reason to get on with business, a reason to be impatient, a game clock to pace accomplishments. It also forces those who truly care about revitalized and innovative contracting to stand up and be counted or lose a positive agent for change.

In summary: Yes, OFPP has proved effective when it enjoyed and exercised directive authority. Yes, it should be reauthorized for another five years — but only if it is empowered and expected to be a forceful agent for change.

Which leads to the committee's next issue: Directive authority.

OFPP Authorities

Two points should be emphasized:

(1) Directive authority is a necessary ingredient for effective OFPP operations; and

(2) Directive authority is *not* disruptive or inimical to effective agency contract operations — and the record proves it.

Any governmental unit purposefully placed where bureaucratic weather fronts constantly collide *had better have some heavy ballast* if it is going to steer any kind of course and not be battered senseless and ultimately blown away. Statutory grounding and blanket regulatory authority are two of the most massive anchors you can provide, just as OFPP was originally created in 1974.

Then as now — and I speak from intimate personal experience — without that directive authority in statute behind the Administrator, *even the most mundane chores are difficult.* Effectively spearheading a particular reform simply could not be done without it — no less establishing a uniform Administration position on contracting issues. Why? Because there would be no clout, no threat, that OFPP *could do anything but accede to the lowest common denominator of agency recalcitrance.* The Administrator's kit of bureaucratic tools, in the end, would be devoid of any wrench big enough to give him or her the necessary leverage.

Example: Although the pace of completion has lagged noticeably in the last two years, I could not have even *initiated* the Federal Acquisition Regulatory (FAR) Project to clean up the hundreds of sets of conflicting agency rules if I hadn't been able to credibly say to the agencies, "Look, we have a mess. I need your help to clean it up — *or else we'll have to try to do it ourselves* because I don't want to face my oversight committees without some progress or have the President his reglatory reform program somehow missed 800 sets of red tape."

Example: The Small Business Administration wouldn't have issued effective regulations to implement the Small Business Act Amendments of 1978 — and even then they were late — if I hadn't said, "Look, you're in violation of the law. Either get those regulations out for comment or *here's a draft set I will issue* under my statuory authority."

Example: Whether you agreed with his decision or not, President Carter could not have pursued in any timely fashion whatsoever his attempts to *use Federal contracts to stem inflation,* whether it was the "smart buyer" rules for lumber and meat or contract award sanctions for firms violating government wage and price guidelines.. There would have *been* no central regulatory authority to do so cleanly and uniformly but for OFPP and, at that time, it's regulatory powers.

Example: Whether you like to see blood on the floor or not, the Secretary of Defense would not have had a duly-empowered office to review the dispute with the Labor Department over *application of the Service Contract Act* to engine overhaul contracts. And Messrs. Strauss and Kahn would not have had a well grounded forum to review *inflationary impacts of Davis-Bacon* also. Those are nasty subjects to have dropped in your lap. The Attorney General ultimately ruled that we did not have authority to preempt Secretary Marshall. But without an OFPP with recognized clout, we wouldn't have seen the issues brought to a professional head. What administrative improvements were made would not have come about. Policy authority only? The most useful thing we could have done then was to *tell everybody to be nice and try to do better* — while the issues still festered and the management system deteriorated further.

(Let me hasten to add that in all these and other cases, we always operated collegially. Inter-agency task forces and joint review meeting with the affected departments were the unbroken rule.)

Let's face it. Even regulations with the force and backing of administrative law are *frequently ignored and circumvented.* Even *with* regulatory authority restored, the biggest challenge facing any Administrator is to construct, implement and monitor enforcement mechanisms. But to leave OFPP powers further denuded to a thin policy purview only means *you might as well not waste the time and money.* All you will get are policies which will achieve only what would have happened without them: Agencies will follow them when it suits their tastes, ignore them when they don't.

As for the second point, those who seem to so fear OFPP's directive authority should look at the record during the 1974-79 period when it possessed and exercised directive authority. There was *no collapse* in agency mission performance; there was *no heavy-handed intervention* in contracting decisions; there was *no unilateral dictum* passed down with no consultation and consensus.

Indeed, because OFPP *was* vested with strong authority during my tenure, the agencies could look to OFPP as a valuable ally and proponent for changes *they* deemed desirable. As often as not, I was criticized for OFPP *not* opposing agency positions.

Finally, the fact of the matter is that even facing OFPP directive authority, any agency head retains a preemptive appeal by virtue of his or her ability to *simply pick up the phone to talk with the OMB Director.*

I do not favor creating an OFPP outside the Executive Office. It needs a home, roots in the decision-making structure at a high level. OMB is a good home — and itself benefits from having a permanent part pursuing a management agenda (at least in contracting) to remind people there *is* an "M" in OMB.

The *quid pro quo* , of course, is that *OFPP must behave like an OMB family member to enjoy the fruits on the table.* No Administrator is going to be able to cavalierly disregard the clear dictates of the OMB Director — and if the issue is important enough, as it was on many occasions during my tenure, any agency head can attempt to throttle OFPP through that channel. In short, an OFPP with directive authority is no bogeyman wandering around with carte blanche powers in any event.

Codification of Executive Order 12352

Codification of agency management responsbilities set forth in the first section of E.O. 123252 would be a constructive addition to a disciplined Federal acquisition system — but only if connected through a strong OFPP linchpin, as already argued.

By itself, codification of even the entire Executive Order would leave a vehicle without an engine.

We struggled with that proposition during the Nixon Administration. During our 1973 hearings, Mr. Frank Zarb presented the Exectuive Branch view that OFPP wasn't necessary. Instead, they proposed a "revitalization" of the current system and had the President issue Executive Order 11717 to fill the breach in congressional patience with promises to do better.

With no small sensation of deja vu, the Reagan Admininstration has issued Executive Order 12352 while supporting the continued emasculation of OFPP's authority. Their legislative proposals would leave OFPP at best as an innocent bystander to attempt to reconcile differences between Defense, GSA and NASA — while even its "policy" authority would be subject to apparently unilateral rejection by an agency which felt its missions were being adversely affected.

Now, is this a scheme to bring strong central leadership to our contracting system? Everyone agrees that is what we're after. But it is a scheme which the Congress rejected in 1973 and which it ought to reject now as well for even additional reasons.

Yes, add the codifcation of pertinent Executive Order provisions — but not without a strongly empowered OFPP.

OFPP Effectiveness

I would like to address this subject in a broader context than the specific ingredients already reviewed.

Start at the top. Take the President, any President. What an awesome job to get anything accomplished, to implement any program. Year by year, it gets more and more difficult to actually manage the Federal government. And we see the results.

Federal procuremet is just one microcosm of the crisis in management we are facing. Those stark budget deficits are the accumulated result of so many obsolete, encrusted management practices. Increased competition in federal contracting could save billions. More disciplined management of grants and cooperative agreements more still. Imposition of more modern weapons acquisition management hold promise of not only dollar savings but more capable equipment for the dollar. Introducing any semblance of disciplined major systems management to meet domestic needs — education, nutrition, housing — could turn night into day in actually delivering the services government must provide.

But that's why OFPP reauthorization and procurement reform are so important, for what these issues tell about our ability to truly bootstrap government management into more demanding times.

Any President ought to be delighted to have a strong, centralized and responsive system of federal contracting at his or her disposal. Every congressional committee ought to breathe easier knowing that critical issues of small business, labor surplus areas, minority business, technological enhancement — these all can be tightly managed and manipulated to produce better aggregate results based on what we've learned and what we believe needs to be done.

But it is the actual getting something done that constantly seems to evaporate after even years of strenuous effort.

The Federal establishment has become monstrously diffused. This is meant as no criticism of individual departments, but we have established too many independent power centers, each doing what they think best to accomplish their narrow mission reponsibilities. The net result is too often sub-optimization, however, and missed opportunities to enhance the performance of the system as a whole. And Federal contracting is one example.

Now, it is no secret that the Defense Department under this Administration probably ranks highest in autonomy. But that is no reason why contracting reforms can't and shouldn't go forward government-wide with the support and cooperation of Defense professionals. Some see only a vast contest between DoD and other agencies for dominance in procurement. My view is somewhat different.

Let me say first that from having dealt with virtually every executive agency, the Defense Department maintains the most professional, accomplished and effective acquisition system of any. The reasons are obvious: the size, number of transactions, comlpexity of the goods and services acquired, the crucial reliance on contracts to meet defense mission needs. (I would have to add that, although much smaller, NASA deserves the highest ratings, as well.)

That's not to say there isn't a world of opportunity still to improve weapons acquisition procedures if OFPP had maintained the authority, interest and agressiveness to pursue implementation of OMB Circular A-109. It hasn't. But there is a larger point.

Sadly, it is the Defense Department which should be offering to support and contribute to a modern overhaul of our contracting system. They have so much to offer — and the record during my tenure proves it. The honor roll of people who already brought government-wide improvements includes so many Defense officials:

- o The Federal Acquisition Regulaion (FAR) Project which I initiated to replace over 600 different sets of regulations simply could not have been done without the leadership of then-Deputy Acquisition Management Dale Church;

- o The FAR writing could not have been done without a dedicated team of 40 DoD professionals led by Air Force Colonel John Slinkard and Navy Captain Vince Pistolessi;

- o The mission planning requirements of OMB Circular A-109 would not have been so well emplaced without Air Force General Toomay;

- o Simplified specifications, more competition and lower prices for commmercial products would not have come about with Army Colonel Justin Holmes;

- o Reforms in subsistence procurement — meat, fish — would not have happened without the leadership of Navy Admiral Stu Platt;

- o We would not have a centralized Federal Procurement Data System operating today if I didn't have the expertise of defense personnel to do it, civilian Joe Canata in particular.

The list could go on and on.

And as for "tests" of more effective competition, let it be clearly noted that we already have a record of successful testing in all these cases and others. Navy Captain Walt Carson has saved us $3.5 billion in the Advanced Self-Protective Jammer (ASPJ) Program by using A-109 acquistion principles. The Defense Department today is saving hundreds of thousands of dollars on everything from boxer shorts to T-shirts to fish sticks.

The Admininstration's proposal that we "test" some of these modern methods for effective competition would be insulting if not so ludicrous.

The main point is that DoD has much to contribute to a modernized Federal procurement system. We can only wish that they would step up to their rightful role in supporting and promoting such government-wide reforms rather than appearing to take their ball and go home — leaving not much behind. That stance is petty and mean-spirited — and certainly does not reflect the vast professionalism of the Department or honor the past contributions of so many of its officials.

The Congressional Dimension

The problems in establishing a coherent contract management system aren't just downtown at the other end of Pennsylvania Avenue or across the river at the

Pentagon. The Congress itself is racked by jealousies over turf and authority between its committees and members no less so than DoD and OMB.

Defense Department fears over a strongly empowered OFPP, at heart, stem from the vision that it will become a "Trojan Horse" for still further congressional incursions into their contracting homeland, this time sent from the hoardes sitting on Governmental Affairs/Government Operations.

Defense professionals properly point to innumerable congressional actions — in statute, in appropriation and authorization bills, in committee reports, in floor language — which all contribute in substantial measure to the dismal fragmentation of rules and procedures we suffer under still today. Every time the Congress imposes another special interest contracting proviso, their fears gain more credibility, whether it's exempting a special class of federal workers from the regimen of contracting review; banning even cost comparison studies to find economies in government services; adding another socio-economic condition to an already incoherent list; or intervening to stuff or strangle funds for an ongoing acquisition program — the net result of which is to favor a contractor in a district curiously well connected to the cognizant congressional sponsor.

"Politics as usual," some would say.

"How much longer can we afford it?" is the obvious retort.

For all we can do to bolster the executive branch procurement system, improvements of truly grand proportions can come only with the selfless leadership of the Members of Congress, too.

The most exciting thing about this particular hearing is that the committee members who sit here are people who also sit on Armed Services. Senator Cohen, Senator Levin, Senator Nunn — you can build the bridges necessary to overcome the debilitating split in interests which seems to impede further contracting reform.

I cannot help but believe that if this issue of acquisition reform is important enough — and it is — then Mr. Tower and Mr. Price, Mr. Cohen and Mr. Levin, Mr. Brooks and Mr. Roth, Mr. Danforth and Mr. Nunn and Mr. Chiles could agree to an alternative strategy along the following lines:

(1) Continue OFPP with strong, directive authority —recognizing that, in the end, DoD has many avenues of superior authority to exercise both within the Executive Branch and through its oversight committees on the Hill.

(2) Begin joint drafting of an acceptable "Federal Acquisition Statute" to replace the fragemented split we have today — and emplace the modern methods we know work. Let DoD roll up its sleeves and take a leadership role here. Recognize from the outset that the Defense Department has every right to craft that statute to accomodate it's particular needs. Even with some concessions, the net result will be of vast benefit.

At the same time, let the four key committee chairs agree that jurisdictional rivalry will not be allowed to get in the way of a badly needed set of reforms. Concede the rightful role of Armed services to preside over program particulars and Governmental Affairs only in policy and procedures from a government-wide standpoint.

This is a very interesting nexus — not just for what it will tell us about a 14-year old reform effort in contract management but also about the condition of our leadership on the Hill and downtown, both.

Senator COHEN. The hearing is adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned, subject to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

98TH CONGRESS
1ST SESSION

S. 1001

To authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, APRIL 5), 1983

Mr. COHEN (for himself and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 11 of the Office of Federal Procurement Policy Act (41 U.S.C. 410) is amended by striking out "three succeeding fiscal years" and inserting in lieu thereof "eight succeeding fiscal years".

THE OFPP ACT, AS AMENDED (41 U.S.C. 401 et seq.)

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

Sec.
- 401. Congressional declaration of policy.
- 402. Congressional findings and purpose.
- 403. Definition.
- 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator.
- 405. Authority and functions of the Administrator.
  - (a) Development and implementation of procurement policies and program coordination for personnel performance improvement.
  - (b) Inapplicability of such directions and regulations to recipients of federal grants.
  - (c) Development and proposal of a central management system; components and functions of system.
  - (d) Review, development, etc., of procurement policies, regulations, procedures, and forms, procurement data, procurement personnel, and procurement contracts.
  - (e) Consultation, etc., with executive agencies.
  - (f) Non-interference with executive agencies.
  - (g) Restriction on delegation of other functions.
  - (h) Issuance of interim policy directives to promote development and implementation of uniform procurement system, etc.; compliance by executive agencies with directives.
  - (i) Interim authority of Director of Office of Management and Budget to deny or rescind promulgation of final agency rule or regulation relating to procurement.
  - (j) Other statutory, etc., authorities and responsibilities unaffected.
- 405a. Uniform Federal procurement regulations and procedures.
- 406. Administrative powers.
- 407. Responsiveness to Congress.
  - (a) Annual reports on activities; proposals for uniform procurement system, etc.
  - (b) Submission of policy matter to Congressional committees.
  - (c) Waiver of notice requirement by President.
- 408. Applicability of existing laws.
- 409. Effect on existing regulations.
- 410. Authorization of appropriations.
- 411. Delegation of authority by Administrator.
- 412. Comptroller General's access to information from Administrator; rule making procedure.

§ 401. Congressional declaration of policy

It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

(1) promoting the use of full and open competition in the procurement of products and services;

(2) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost;

(3) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel, and eliminating fraud and waste in the procurement process;

(4) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

(5) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

(6) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;

(7) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

(8) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operation;

(9) coordinating procurement policies and programs of the several departments and agencies;

(10) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

(11) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government; and

(12) promoting fair dealing and equitable relationships among the parties in Government contracting.

§ 402. Congressional findings and purpose

(a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this chapter is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

§ 403. Definition

(a) As used in this chapter, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of Title 5, and also a wholly owned Government corporation within the meaning of section 846 of Title 31.

(b) As used in this chapter, the term "procurement" includes all stages of the acquisition process, beginning with the process for determining a need for property and services through to the Federal Government's disposition of such property and services.

§ 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator

(a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

§ 405. Authority and functions of the Administrator—Development and implementation of procurement policies and program coordination for personnel performance improvement

(a) The Administrator shall provide overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel. The Administrator shall develop for submission under section 407(a) of this Title a uniform procurement system which shall, to the extent he considers appropriate and with due regard to the program activities of the executive agencies, include uniform policies, regulations, procedures, and forms to be followed by executive agencies—

(1) in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property; and

(2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (1)(A), (1)(B), and (1)(C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

Inapplicability of such directions and regulations to recipients of federal grants

(b) Nothing in subsection (a)(2) of this section shall be construed—

(1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

Development and proposal of a central management system; components and functions of system

(c) The Administrator shall develop and propose a central management system consisting of the Office of Management and Budget, the General Services Administration, and procurement offices in executive agencies to implement and enforce the uniform procurement system described in subsection (a) of this section.

Review, development, etc., of procurement policies, regulations, procedures, and forms, procurement data, procurement personnel, and procurement contracts

(d) The functions of the Administrator shall include—

(1) reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended, or rejected, and to propose the priority and schedules for completing the remaining recommendations;

(2) developing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

(3) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(4) promoting and conducting research in procurement policies, regulations, procedures, and forms, through the Federal Acquisition Institute, which shall be located within the Office and directed by the Administrator;

(5) establish, through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administrator, a computer-based information system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

(6) recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel;

(7) developing, for inclusion in the uniform procurement system to be submitted under section 407(a) of this title, standard contracts and contract language in order to reduce the Government's cost of procuring goods and services as well as the private sector's cost of doing business with the Government; and

(8) providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement.

Consultation, etc., with executive agencies

(e) In the development and implementation of the uniform procurement system the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures and forms.

Non-interference with executive agencies

(f) The authority of the Administrator under this chapter shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

Restriction on delegation of other functions

(g) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this chapter, shall be assigned, delegated, or transferred to the Administrator.

Issuance of interim policy directives to promote development and implementation of uniform procurement system, etc.; compliance by executive agencies with directives

(h)(1) Until the effective date of legislation implementing a uniform procurement system, the Administrator may, with the concurrence of the Director of the Office of Management and Budget, issue policy directives, in accordance with existing law, for the purpose of promoting the development and implementation of the uniform procurement system or for the purpose of promoting the policies set forth in paragraphs (1) through (8) of section 401 of this title. Such policy directives shall be followed by executive agencies.

(2) Any policy directives issued pursuant to paragraph (1) may require executive agencies to issue implementing regulations which shall be in accord with the criteria and standards set forth in such policy directives.

Interim authority of Director of Office of Management and Budget to deny or rescind promulgation of final agency rule or regulation relating to procurement

(i) Until the effective date of legislation implementing a uniform procurement system, the Director of the Office of Management and Budget shall deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Director determines that such rule or regulation is inconsistent with the policies set forth in paragraphs (1) through (8) of section 401 of this title or is inconsistent with any policy directives issued pursuant to subsection (h) of this section.

Other statutory, etc., authorities and responsibilities unaffected

(j) Nothing in this chapter shall be construed—

(1) to impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) to limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

§ 406. Administrative powers

Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this chapter; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

§ 407. Responsiveness to Congress—Annual reports on activities; proposals for uniform procurement system, etc.

(a)(1) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

(2) At the earliest practicable date, but in no event later than one year after October 10, 1979, the Administrator shall transmit to the House of Representatives and the Senate his proposal for a uniform procurement system. Such proposal shall include a full description of the proposed system, projected costs and benefits of the system as proposed, and short- and long-term plans for implementation of the system, including schedules for implementation. At the same time, the Administrator shall transmit a report on the recommendations of the Commission on Government Procurement specified in section 405(d)(1) of this title.

(3) At the earliest practicable date, but in no event later than one year after presentation of the proposal described in paragraph (2) of this subsection, the Administrator shall propose to the House of Representatives and the Senate recommended changes in legislation relating to procurement by executive agencies. If the Administrator deems it necessary, these recommendations shall include a proposal for a consolidated statutory base for procurement by executive agencies.

(4) At the earliest practicable date, but in no event later than the submission of the legislative recommendations described in paragraph (3) of this subsection, the Administrator shall present a proposal for a management system described in section 405(c) of this title to implement and enforce the uniform procurement system.

Submission of policy matter to Congressional committees

(b) At least 30 days prior to the effective date of any policy prescribed under section 405(h) of this title, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy. Such report shall include—

(1) a full description of the policy;

(2) a summary of the reasons for the issuance of such policy; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy.

Waiver of notice requirement by President

(c) In the case of an emergency, the President may waive the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy.

§ 408. Applicability of existing laws

The authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 405 of this title.

§ 409. Effect on existing regulations

Procurement policies, regulations, procedures, or forms in effect as of October 10, 1979, shall continue in effect, as modified from time to time by the issuing offices on their own initiative or in response to policy directives issued under section 405(h) of this title until repealed, amended, or superseded pursuant to the adoption of the uniform procurement system described in section 405 of this title.

§ 410. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, $4,000,000 for the fiscal year ending September 30, 1980, and for each of the three succeeding fiscal years; and one-third of the funds appropriated for any such fiscal year shall be made available to the Federal Acquisition Institute for the performance of its functions under this chapter. Any subsequent legislation to authorize appropriations to carry out the purposes of this chapter shall be referred in the Senate to the Committee on Governmental Affairs.

§ 411. Delegation of authority by Administrator

(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this chapter, other than his basic authority to provide overall leadership in the development of Federal procurement policy, to any other executive agency with the consent of such agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this chapter.

§ 412. Comptroller General's access to information from Administrator; rule making procedure

(a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of developing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

EXECUTIVE ORDER NO. 12352
FEDERAL PROCUREMENT REFORMS

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement, it is hereby ordered as follows:

Section 1. To make procurement more effective in support of mission accomplishment, the heads of executive agencies engaged in the procurement of products and services from the private sector shall:

(a) Establish programs to reduce administrative costs and other burdens which the procurement function imposes on the Federal Government and the private sector. Each program shall take into account the need to eliminate unnecessary agency procurement regulations, paperwork, reporting requirements, solicitation provisions, contract clauses, certifications, and other administrative procedures. Private sector views on needed changes should be solicited as appropriate;

(b) Strengthen the review of programs to balance individual program needs against mission priorities and available resources;

(c) Ensure timely satisfaction of mission needs at reasonable prices by establishing criteria to improve the effectiveness of procurement systems;

(d) Establish criteria for enhancing effective competition and limiting noncompetitive actions. These criteria shall seek to improve competition by such actions as eliminating unnecessary Government specifications and simplifying those that must be retained, expanding the purchase of available commercial goods and services, and, where practical, using functionally-oriented specifications or otherwise describing Government needs so as to permit greater latitude for private sector response;

(e) Establish programs to simplify small purchases and minimize paperwork burdens imposed on the private sector, particularly small businesses;

(f) Establish administrative procedures to ensure that contractors, especially small businesses, receive timely payment;

(g) Establish clear lines of contracting authority and accountability;

(h) Establish career management programs, covering the full range of personnel management functions, that will result in a highly qualified, well managed professional procurement work force; and

(i) Designate a Procurement Executive with agency-wide responsibility to oversee development of procurement systems, evaluate system performance in accordance with approved criteria, enhance career management of the procurement work force, and certify to the agency head that procurement systems meet approved criteria.

Sec. 2. The Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration shall continue their joint efforts to consolidate their common procurement regulations into a single simplified Federal Acquisition Regulation (FAR) by the end of calendar year 1982.

Sec. 3. The Director of the Office of Personnel Management, in consultation with the heads of executive agencies, shall ensure that personnel policies and classification standards meet the needs of executive agencies for a professional procurement work force.

Sec. 4. The Director of the Office of Management and Budget, through the Office of Federal Procurement Policy as appropriate, shall work jointly with the heads of executive agencies to provide broad policy guidance and overall leadership necessary to achieve procurement reform, encompassing:

(a) Identifying desirable Government-wide procurement system criteria, such as minimum requirements for training and appointing contracting officers;

(b) Facilitating the resolution of conflicting views among those agencies having regulatory authority with respect to Government-wide procurement regulations;

(c) Assisting executive agencies in streamlining guidance for procurement processes;

(d) Assisting in the development of criteria for procurement career management programs;

(e) Facilitating interagency coordination of common procurement reform efforts;

(f) Identifying major inconsistencies in law and policies relating to procurement which impose unnecessary burdens on the private sector and Federal procurement officials; and, following coordination with executive agencies, submitting necessary legislative initiatives for the resolution of such inconsistencies; and

(g) Reviewing agency implementation of the provisions of this Executive Order and keeping me informed of progress and accomplishments.

Ronald Reagan

The White House,
March 17, 1982

REPORT OF THE COMMISSION ON GOVERNMENT PROCUREMENT

VOLUME 1

DECEMBER 1972

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Washington, D. C.

JAMES E. WEBB[3]
Attorney at Law
Washington, D. C.

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[1] Appointed April 10, 1972 to replace Senator Henry M. Jackson who resigned.

[2] Appointed June 12, 1972 to replace Robert L. Kunzig who resigned.

[3] Appointed March 6, 1972 to replace Joseph W. Barr who resigned.

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Matthew S. Watson
Gerard S. Welch
Thomas F. Williamson

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[1] Appointed April 4, 1971 to succeed Paul A. Barron who became Special Assistant to the Chairman.

CHAPTER 2

Policy Development and Implementation

Federal agencies contract within a framework of ground rules set by all three branches of Government. These policies[1] establish the overall environment of procurement, and control millions of individual decisions. Therefore, in reviewing the procurement process we concentrated on the manner in which basic policies are developed and implemented.

There is a void in policy leadership and responsibility, and a fragmented and outmoded statutory base. These shortcomings in basic law and policy are root causes of many problems that beset the procurement process. Virtually every Commission study group recommended, in one form or another, enhanced central policy direction.

Effective management of the procurement process requires a high degree of direction and control of basic policy. However, except for isolated and sporadic cases, the executive branch has not seen fit to fill this need. This is not to say that there should be centralized Federal buying for all agencies, or a central group involved in agency business decisions. Nor do we suggest a huge policymaking bureaucracy to issue all procurement regulations.

What we urge, instead, is an Office of Federal Procurement Policy, high in competence and small in size, established by law and responsive to Congress, and placed in the executive branch at a level where it can provide leadership and oversee the development and application of procurement policy. The contracting agencies should continue to be responsible for individual procurement actions and agency procurement operations.

We have placed creation of a central policy office first among our recommendations because of its overall importance in achieving the improvements we propose in the procurement process.

Recommendation 1. Establish by law a central Office of Federal Procurement Policy in the Executive Office of the President, preferably in the Office of Management and Budget, with specialized competence to take the leadership in procurement policy and related matters. If not organizationally placed in OMB, the office should be established in a manner to enable it to testify before committees of Congress. It should develop and persistently endeavor to improve ways and means through which executive agencies can cooperate with and be responsive to Congress.

SOURCES OF PROCUREMENT POLICY

Many segments of Government make or strongly influence procurement policy. Table 1 lists the major policymakers by branch. The next few paragraphs outline the nature of these influences.

Legislative Branch

Congress establishes fundamental procurement policies through legislation and through

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[1] For example, policies governing methods of procurement, contract clauses, solicitation of bids and proposals, administration of contracts, termination of contracts, cost allowability, quality control, contract types, contract forms, warranties, contract options, and small purchase procedures.

TABLE 1. SOURCES OF PROCUREMENT POLICY

Legislative Branch

- *Congress*
  - Legislation—Government-wide or limited to particular agencies or programs
  - Committee reports
  - Informal communications
- *General Accounting Office*
  - Legislative advice to Congress
  - Reports and audits
  - Decisions on individual matters
  - Comments on proposed executive branch regulations
  - Regulations

Executive Branch

- *President*
  - Executive orders
  - Other directives
- *Office of Management and Budget*
  - Circulars
  - Legislative advice to Congress
- *Department of Defense*
  - ASPR
  - Other directives
- *General Services Administration*
  - FPR
  - Other directives
- *Other procuring agencies*
  - Procurement regulations
  - Other directives
- *Boards of contract appeals*
  - Decisions
- *Other agencies* (for example, Department of Labor, Small Business Administration, Environmental Protection Agency)
  - Regulations
  - Other directives

Judicial Branch

- *Courts*
  - Decisions in contract cases

Source: Commission Studies Program.

less formal actions ranging from committee reports and investigations to individual attention to constituent complaints or suggestions. These actions may shape Government-wide policy or affect only individual agencies, groups of agencies, or units or programs within an agency. Our studies identified more than 4,000 provisions of Federal law related to procurement. Most important among these are the Armed Services Procurement Act of 1947[2] and title III of the Federal Property and Administrative Services Act of 1949.[3] Improvements needed in these laws are discussed in Chapter 3 and in Part J (Other Statutory Considerations).

The General Accounting Office (GAO) serves as an arm of the Congress. With its responsibility for auditing and certifying to Congress the legality of specific contractual disbursements, and its continuing responsibility for closely following procurement trends, GAO exerts profound influence on procurement policy. This influence is exerted through decisions on individual matters, overall reports, audits, legislative advice to Congress, and review of proposed agency policies. Its actions may affect Government-wide patterns of practice or policy, or may relate only to particular agencies or situations.

Judicial Branch

Interpretations of statutes, regulations, and contract provisions by the Federal courts in suits involving procurement have a direct effect on the evolution of policy.

Executive Branch

Although Congress and the courts play a basic role, most procurement policy is developed in the executive branch. Much of this development consists of translating the basic policies and requirements established by the other branches into a body of rules and regulations governing procurement; keeping Congress informed as to the effects of legislation and recommending changes to make the process more effective; interpreting the requirements in specific cases for contractors, grantees, and others; and reporting on the results of action taken. The policies initiated in the executive branch also cover important subjects on which Congress and the courts have not spoken.

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[2] 10 U.S.C. 2301-14 (1970).

[3] 41 U.S.C. 251-60 (1970).

The President establishes procurement policy in some areas through Executive orders[4] or similar directions[5] to the agencies. Despite its pervasive authority, the Office of Management and Budget (OMB) has little direct, formal involvement in the formulation of procurement policy and has not evidenced a continuing concern with overall procurement management; it infrequently promulgates policy in circulars[6] limited to a particular topic.

Under the Armed Services Procurement Act, the Department of Defense (DOD) establishes policy for the military departments.[7] The General Services Administration (GSA) is directed by the Federal Property and Administrative Services Act to set basic policies for the civilian agencies.[8] However, this direction is circumscribed by a series of exceptions and limitations.[9]

In the absence of an effective focal point for procurement policy in the executive branch, DOD dominates its development. DOD dominates primarily because the military departments historically have done the major share of Federal contracting. Through the Armed Services Procurement Regulation Committee structure, DOD operates the most effective forum for development of procurement policies.[10] The defense agencies are required to follow the Armed Services Procurement Regulations (ASPR) and other agencies often do so if no other guidance is available.

By virtue of its responsibility for the Federal Procurement Regulations (FPR), GSA has the second most significant impact in the executive branch on the evolution of procurement policy. The Federal Procurement Regulations are developed with the advice of an interagency committee composed of representatives from 27 agencies. However, the functioning of the committee is sporadic, and most of what is incorporated in the FPR stems from earlier coverage in ASPR. The military departments and others, including the National Aeronautics and Space Administration (NASA) are not bound by the FPR. For this and other reasons, including the status of GSA in the executive branch, the FPR system has not been an effective source of Government-wide procurement policy. New agencies, and existing agencies whose procurement missions expand into new areas, lack the guidance that should be available from a system of uniform Government-wide procurement policy.[11]

The present lack of central leadership in the formulation of procurement policy has led to development of many policies and procedures that are needlessly diverse or meaninglessly different. In our discussion of the regulatory framework in Chapter 4 and elsewhere throughout this report we discuss some of these diverse policies.

In Chapter 11, we discuss numerous social and economic programs that wholly or partially depend on the procurement process for their implementation. Agencies primarily concerned with these programs, such as the Department of Labor and the Environmental Protection Agency, issue rules and regulations that are binding on procurement officials in other agencies.[12] Our studies show that procedures for coordinating these policies and for melding them into overall procurement policies range from virtually nonexistent to barely satisfactory. The lack of continuing management attention and leadership from a level above both the procuring agencies and the agencies principally concerned with social and economic programs is a chief cause of problems with these programs.

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[4] For example, Executive Order 11602, 3 CFR 234, Clean Air Act Administration with Respect to Federal Contracts, Grants, and Loans.

[5] For example, Memorandum and Statement of Government Patent Policy issued by President Nixon, Aug. 23, 1971, *Federal Register*, 36:16887.

[6] For example, OMB Circular A-100, *Cost Sharing on Research Supported by Federal Agencies*, Dec. 18, 1970.

[7] In the act, this authority is granted by implication only. Other authorities relied on are 10 U.S.C. 2202 and 5 U.S.C. 301 (1970).

[8] 41 U.S.C. 242(a) (1970).

[9] *Ibid.*

[10] Also significant is the fact that the *Armed Services Procurement Regulation* predated the *Federal Procurement Regulations* by a dozen years. As a result, the content of FPR has been strongly influenced by ASPR.

[11] A specific example is the recently published procurement regulations of the Department of Transportation (*Federal Register*, 37:4801 et seq. (1972), over 90 pages in length, which implement and supplement the FPR. A DOT official estimated that 98 percent of the DOTPR material should have been developed and issued at the FPR level, but because FPR is neither adequate or timely for their purposes DOT was forced to develop these policies at the agency level.

[12] For example, 41 CFR, Ch. 50—Public Contracts, Department of Labor.

In Part F, we discuss the lack of consistency across Government, and within agencies, in the use of contracts and grants. We highlight the confusion caused by inconsistent and often interchangeable use of these instruments and the hodgepodge of clauses and administrative techniques employed.

Effects on the Procurement Process

Throughout this report, we discuss many problems caused by the lack of central executive branch leadership in developing policies and effectively monitoring ongoing procurement operations. Our conclusions are summarized below:

- Government procurement policies and procedures are needlessly diverse. Although complete uniformity is neither desirable nor attainable, there is no justification for much of the diversity that exists.
- Contractors frequently are bewildered by the variety of requirements from different agencies but lack an effective route in the executive branch through which to appeal for more realistic treatment.
- There is no unit in the executive branch prepared to interact with Congress and GAO on a Government-wide basis with respect to recommendations and advice for improving the procurement process.
- There is no systematic Government-wide effort to improve training or qualifications of procurement personnel or for continuing study of ways to improve the process.
- When agencies disagree on the best procurement policy to adopt, the only arbiter available is OMB, which is not staffed to provide the needed decisions in a timely fashion.
- No authoritative source in the executive branch is knowledgeable of how the public and private sector interface is affected by procurement, how much agencies are procuring, or how well they are implementing existing Government-wide policies.
- Data on the operation of the procurement process is either nonexistent or collected with little regard for Government-wide management use or comparative analyses.

THE OFFICE OF FEDERAL PROCUREMENT POLICY

Major Attributes

We have concluded that a central Office of Federal Procurement Policy is urgently needed. The office should have the following attributes:

Be independent of any agency having procurement responsibility. Objectivity requires separation of basic procurement policymaking from operational concerns and biases. Judicious use of advice and personnel from the procuring agencies will avoid the dangers of an ivory tower approach to policy formulation. The new office should not become involved in the award of contracts or in the administration of procurement actions.

Operate on a plane above the procurement agencies and have directive rather than merely advisory authority. A major limitation in the effectiveness of GSA as the responsible agency for the FPR has been its circumscribed authority and lack of control over other agencies in the executive branch.

Be responsive to Congress. In the basic procurement statutes, Congress should provide the executive branch ample latitude for initiative and experimentation aimed at improving procurement policies. In turn, the executive branch must provide a responsible, effective, and responsive source of Government-wide policy control and leadership within a framework of executive-legislative cooperation.

Consist of a small, highly competent cadre of seasoned procurement experts. To ensure its focus on major procurement policies and effective use of agency expertise, the Office of Federal Procurement Policy should be limited in size. Its staff should be composed of experts in major disciplines necessary for procurement; for example, business management, law, accounting, and engineering.

Representative Functions

Without attempting to define each duty and operating rule for the Office of Federal Procurement Policy, we suggest the following functions as expressing the type of organization we have in mind:

- Serve as the focal point within the executive branch with special competence and leadership in Government-wide procurement and procurement-related matters.
- Provide for the issuance of Government-wide policies as separate instructions or for DOD issuance of such policies for defense agencies and GSA issuance for other agencies. Provide for the granting of exceptions to established policies and procedures when justified.
- Designate lead agencies to develop most Government-wide and multi-agency policies and procedures in coordination with other agencies. Participate, as appropriate, with the lead agency in coordination with other agencies.
- Establish Government-wide guidelines concerning the use of grants and the policies to be followed in making grants.
- Review and reconcile, where appropriate, those procurement policies and procedures that are not Government-wide but affect two or more Government agencies, or their suppliers (for example, the number and kinds of differing requirements placed on suppliers).
- Make or obtain the final decision when controversy or irreconcilable differences exist between executive agencies concerning procurement policy or regulatory development.
- Develop and promote programs for the upgrading of procurement personnel, including recruitment, training, career development, and standards of performance and the conduct and sponsorship of research in procurement policy and procedures.
- Monitor and revise instructions concerning reliance on the private sector and maintenance of the in-house competence necessary to assure that this reliance yields benefits commensurate with its promise.
- Promote Government-wide exchange of information that highlights successful ways to improve the procurement process.
- Establish requirements for uniform reports and statistics on procurement activities.
- Establish advisory groups, as desirable, to provide counsel and advice and to serve as sounding boards for policies, procedures, and practices related to procurement.

Organizational Placement for the Central Policy Office

Alternatives considered for the organizational placement of the Office of Federal Procurement Policy ranged from placement in an existing agency to the creation of an independent office. On the basis of the functions to be performed and the authority to be vested in the central authority, the Commission strongly favors placement in the Office of Management and Budget.

OMB has broad Government-wide policy and management responsibility and can relate procurement matters to other program and operational requirements. It has a large measure of responsibility for leadership in all areas of management improvement and demonstrated capability for achieving interagency coordination and cooperation. It is also in a central position in the Executive Office of the President, which should make it effective in dealing with executive branch procurement activities, GAO, Congress, and the public. Additionally, having a Government-wide perspective and no purchasing responsibilities, we believe OMB can consider procurement policy needs in a more objective manner than can an agency engaged directly in procurement.

Within OMB, the Office of Federal Procurement Policy should be headed by an experienced, high-level official. We recommend a Deputy Director with no other responsibilities. This would ensure the identity, level of authority, and continuity of effort necessary for leadership toward effective management of the procurement function.

We recognize that the wishes of the President are of overriding importance in the organization of his Executive Office. Therefore, we have stopped short of saying that the office should only be in OMB. Placement elsewhere in the Executive Office, as long as responsiveness to Congress is assured, would be consistent with our recommendation.

Legislative Base

The Office of Federal Procurement Policy should be established by law. In the long run, only an organization solidly based in statute can have the prestige, stature, and assurance of continuity of effort necessary for so important a function. By enacting the basic statutory authority for the policy office, Congress can make clear the relationship it intends to maintain with the executive branch in policy development.

Executive Branch Action

We view the establishment of an Office of Federal Procurement Policy as long overdue and urgently required. Therefore, recognizing that the Congress will want to consider with care the legislation establishing the procurement policy office, we suggest the President give immediate consideration to establishing the office by Executive order, without waiting for the legislative process to be completed. The office could then begin to give prompt attention to the problems highlighted in our report and to work with Congress and the agencies in considering and implementing our recommendations.

Relationship of Recommendation 1 To Other Recommendations

Throughout this report, we refer to the Office of Federal Procurement Policy either in recommendations or in the accompanying text. The purpose is to highlight the potential role of the office. We emphasize, however, that such recommendations are not contingent on the establishment of an Office of Federal Procurement Policy. Each of our recommendations has merit independent of the existence of such an office.

Proposal for a Uniform Federal Procurement System

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 26, 1982

TO THE PRESIDENT OF THE SENATE AND THE
SPEAKER OF THE HOUSE OF REPRESENTATIVES

In accordance with Public Law 96-83, "The Office of Federal Procurement Policy Act Amendments of 1979," and on behalf of this Administration, I respectfully submit an integrated proposal for the Uniform Federal Procurement System, as developed by the Office of Federal Procurement Policy. The proposal describes desirable reforms in Federal procurement and management systems as well as the substance of changes in legislation to accomplish these reforms.

It has long been recognized that major reforms in Federal procurement practices are needed, not only to minimize adverse impacts upon the private enterprise system, but also to improve the economy and efficiency of Government operations. The recognition has progressed through the Commission on Government Procurement (1969 - 1972), the establishment of the Office of Federal Procurement Policy (1974), the OFPP Reauthorization Act requirements (1979), and has culminated in the enclosed proposal.

This proposal represents the Administration's commitment on the need for, and the nature of, procurement reform. In furtherance of that commitment, we anticipate that a Presidential Executive order will be issued within the next few days on the subject of procurement reform. It will assure that the reforms that can be accomplished by administrative actions are made in an orderly, effective, and timely manner. This Executive order is but one in a series of actions this Administration is taking to improve the process by which over one-fifth of the Federal Budget is spent.

You will note that Chapter 5 of the proposal contains the substance of possible amendments to the Armed Services Procurement Act, the Federal Property and Administrative Services Act and to other statutes. These draft revisions contain the essence of changes believed desirable to fully achieve all the management system and procurement system improvements anticipated for the proposed system. Further work and interagency coordination are needed to finalize these and convert them into bill format. Where appropriate, tests should be conducted in those areas where the possible amendments result in what appear to be fundamental changes to long established acquisition processes, such as the new concepts and methods of competition. Legislative authority to conduct such tests will be sought where necessary. We anticipate forwarding an executive branch bill by April 30, 1982. In the meantime, the Executive order, once issued, will permit proceeding immediately with those changes not dependent upon statutory revisions.

The Administrator for Federal Procurement Policy stands ready to work with the Congress in the implementation of the Uniform Federal Procurement System.

Sincerely,

Edwin L. Harper
Deputy Director

Enclosure

NOTE: The Executive Order, referenced above, was signed by President Reagan on March 17, 1982, and is included as Appendix F to this Proposal.

Section 4. Effective Competition With Latitude for Innovation

Current Concepts of Competition Are Deficient

To overcome longstanding problems in achieving effective competition in Federal procurement, the proposed system introduces new statutory concepts of competition, together with new methods to stimulate and expand the use of competition. These new concepts and methods give first priority to what is in the marketplace rather than what ought to be in the marketplace. They are intended to stimulate wider use of competition by stressing substance, not form. The system also establishes focal points to advocate and help plan for competition. It statutorily restricts noncompetitive procurement to very special circumstances.

The national policy on competition has been a part of various procurement statutes almost since the nation was founded. Congressional emphasis on full and free competition is manifested in statutory preferences for formal advertising, dating back to 1809. Yet, as figure 13 shows, formal advertising accounts for less than eight percent of the FY 81 Federal procurement dollars, and more than half of the total dollars were reported as noncompetitive.[16] Figures 14 and 15 show the degree of competition in 1981 reported by the major agencies for large and small purchases.

Why the Competitive System Needs Changing

The preferred method of competition now required by statute is so rigid that it actually inhibits the Government from taking advantage of the competitive marketplace. Formal advertising requires precise specifications, terms and conditions—a common baseline that permits award solely on the basis of price. The result is that the base of suppliers tends to shrink to those few (or in some cases only one) who perform to unique Government specifica-

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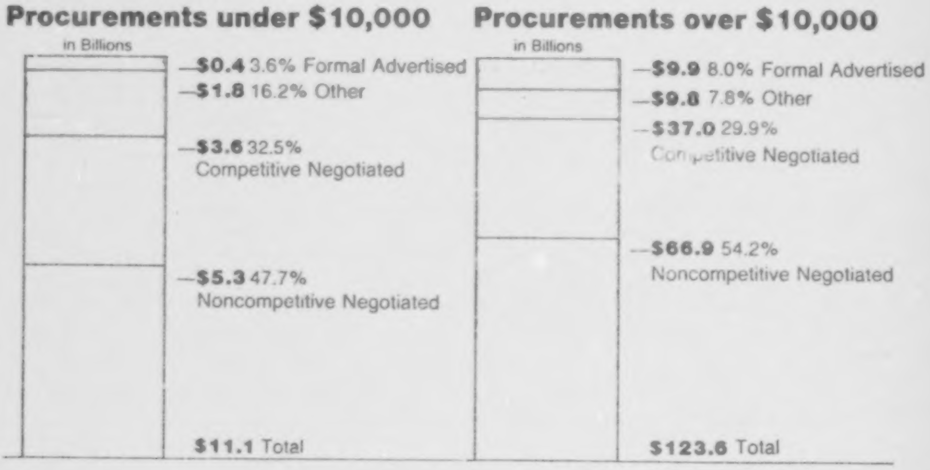
[16] Some portion of the percent of noncompetitive dollars went for follow-on contracts. Reliable data are not available to show how many of the original contracts were competitive.

Fig. 13

Methods of Procurement

Fiscal Year 1981



Source: FPDS

Fig. 14

Degree of Competition in Procurements over $10,000

Fiscal Year 1981

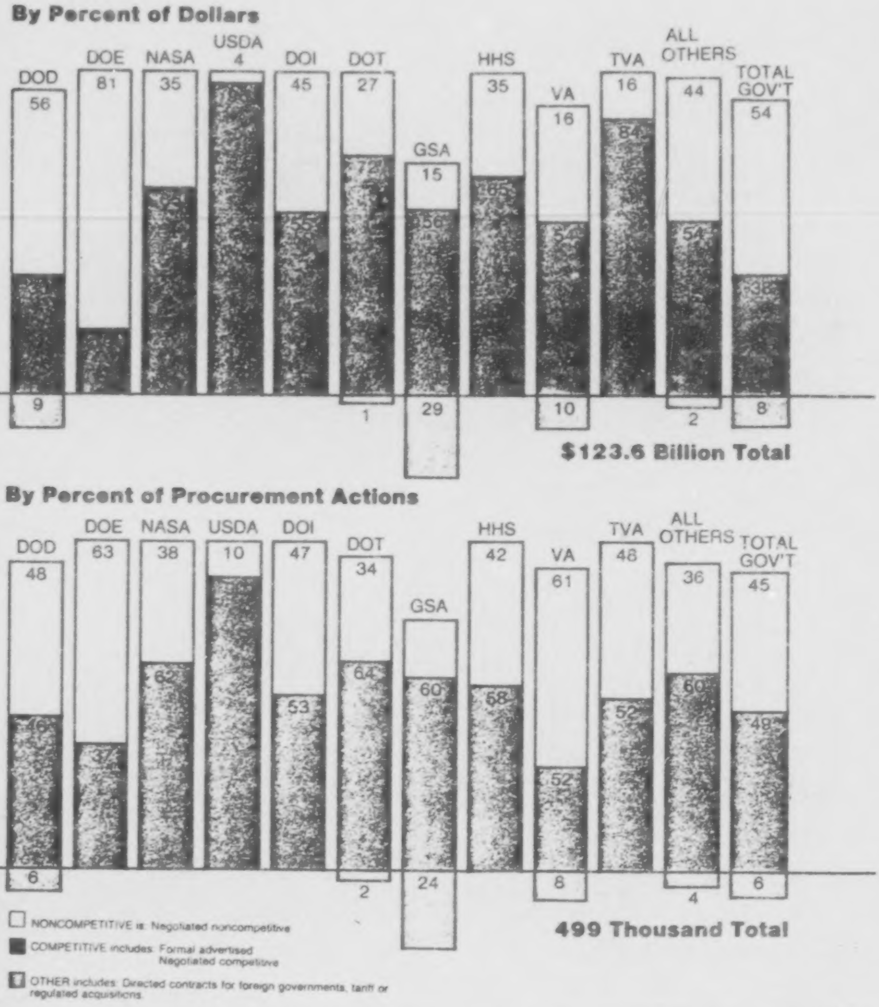
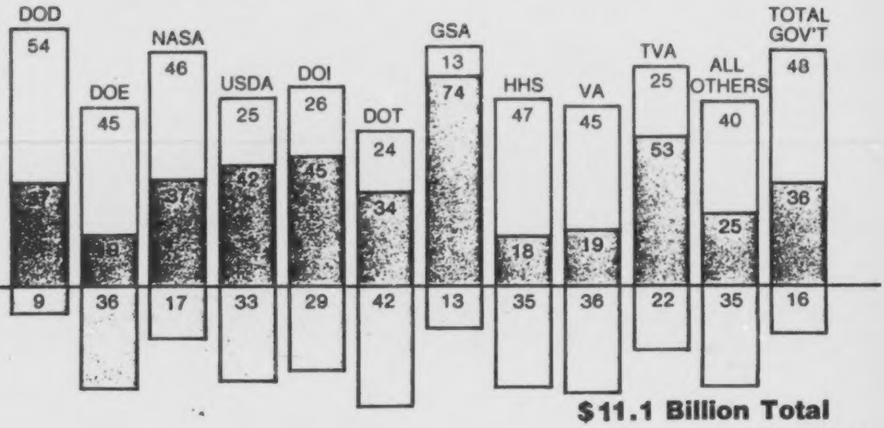


Fig. 15

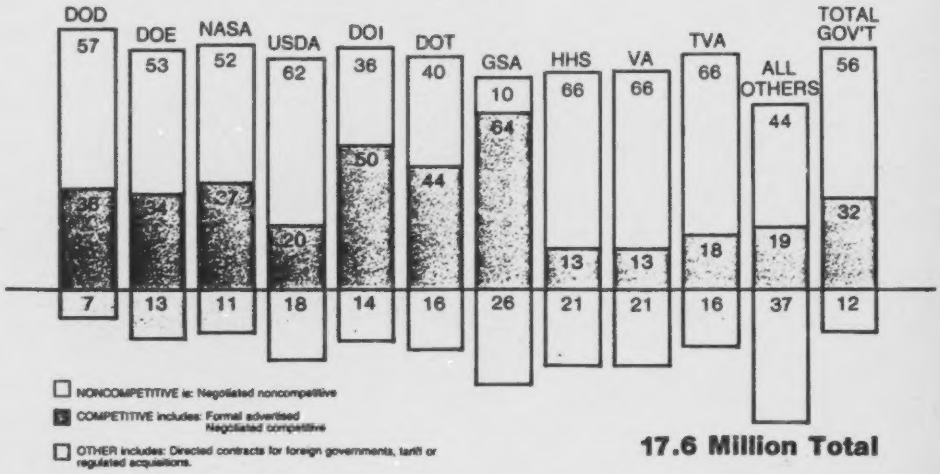
Degree of Competition in Procurements under $10,000

Fiscal Year 1981

By Percent of Dollars



By Percent of Procurement Actions



tions. The Government often becomes the sole or major customer for these contractors. Sometimes, formally advertised solicitations attract only one bidder. Each side is sheltered from the competitive forces of the marketplace; each is a captive of the other.

Government Mandated Designs Curb Competition

Over 46,000 Government specifications and standards have been developed. Some of these are necessary, particularly for items unique to military operations. In many cases, however, the use of detailed design specifications precludes consideration of acceptable alternatives. A wide range of similar but not identical products which have stood the test of the commercial marketplace and which may perform better and cost less to own is not considered. This deprives the Government of much private sector ingenuity, new technology and expertise. Because survival in our private enterprise economy requires that products be designed to compete not only on price but also on performance, operating costs, ease of maintenance and durability, the lowest bid on a solicitation could be the highest cost.

Use of unique Government specifications has several other disadvantages. They:

- Often take years to prepare, may run into thousands of pages, are too complex for many firms and are expensive to maintain and update.
- Cannot keep pace with continuous advances in the commercial marketplace and are constantly threatened by obsolescence.
- Require special facilities, production lines and startup costs which few firms are willing to accept—because they wish to stay competitive in the commercial marketplace.
- Tend to perpetuate old technologies, retain inefficient capital equipment and foster outdated industry practices.
- Frequently depend on transfer of technical data and drawings from the original producer to other firms. Such transfers are often incomplete due to trade secrets, individual shop practices, process techniques, constant design changes and lack of contractor motivation.
- Constantly leave the Government open to charges of errors in specifications and drawings, thereby permitting contractors to escape performance responsibility.
- Lead to goldplating by the Government as extra protection against inferior quality from marginal firms.
- Level competitors technically and lead to "buy-in" pricing because it is the only way left for a firm to distinguish its bid. The Government usually pays the real cost either in pricing follow-on work or through a "bailout."

Finally, formal advertising is predicated on the assumption that specifications can be drafted so perfectly by the Government that all bidders will be bidding on the same thing, and that price, without discussion, will be the only basis for award. This method is often not suitable for meeting agency needs; nor, as discussed above, is it the best way in many procurements to maximize competition. In fact, formal advertising cannot be used at all for procurements of complex or new and unproven products or services which represent more than half of today's Federal procurement dollars.

What Is the Contracting Officer's Alternative Today?

If, under present statutes, contracting officers need to explore alternative products or designs, consider factors other than initial price or have discussions with prospective contractors, they must select, justify and document a statutory exception to formal advertising. The exceptions to formal advertising are numerous and all-encompassing (17 for Defense and 15 for civil agencies). Over 90 percent of Federal procurement dollars are spent through statutory exceptions (figure 13).

A significant portion of negotiated procurement is competitive. However, the public perception of negotiation is that it is noncompetitive. The following statement illustrates the frustration of the largest single Federal procuring agency in attempting to operate under the current statutory concept of competition:

> . . . The complexity of most military products is such that formal advertisement procedures simply cannot be made to work in the vast majority of cases . . . It is the substance, rather than the form, of competition which should be of principal concern to the Congress and the public.[17]

A New Statutory Approach to Competition

The problems with competition can be overcome by replacing the present requirement (either to use formal advertising or justify negotiation) with the business policies and practices described in this proposal.

The proposal recognizes that a basic element of our free enterprise system is that participation in any market, including the Government market, is voluntary. Therefore, the Government is competing for industrial resources. To obtain competent contractors, the Government must offer satisfactory rewards and an environment in which private sector managers are willing to compete. In short, the Government must attract its industrial base; it cannot command it, except in wartime.

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[17] Honorable Clark M. Clifford, Secretary of Defense, Fiscal Year 1970 Posture Statement, p. 146.

What Is Effective Competition?

From the standpoint of Government procurement, competition is a marketplace condition in which two or more independent firms, each with a reasonable expectation of winning, can bid to obtain a contract.

To be effective, competition must enable the Government to acquire products or services at reasonable prices, and it must be efficiently and fairly conducted. Since conditions vary from one procurement to another, contracting officers must have the flexibility to capitalize on how best to achieve effective competition in a given case.

New Standards for Competition

Perhaps the greatest impetus to competition in the proposed system will be the simplification of the procurement process discussed earlier. This simplification will be reinforced by statutory requirements for effective competition, stringent limitations on noncompetitive procurement and by Government-wide quantitative and qualitative standards in areas such as the following:

- Advance Planning. There will be advance planning of proposed procurements above a certain dollar threshold, together with analysis of the marketplace to determine what is available to satisfy agency needs.[18]
- Statements of Need. The solicitation will incorporate a clear and accurate performance description of the need or requirement to be satisfied. It will not contain features, designs or manufacturing processes which unduly restrict competition. Functionally stated performance requirements will be used to the maximum extent possible.[19]
- Proprietary Items. The existence of patents or other proprietary rights will not be the basis for noncompetitive procurement if there are competitive alternatives.
- Contractor Qualifications. Unreasonable qualification or experience requirements will not be used to limit sources, nor will bonding requirements be used as a substitute for determining responsibility. Contracts will only be awarded to bidders who are financially capable and have the ability to deliver the desired product or service.
- Public Notice. Proposed procurements above $10,000 will normally be announced in the Commerce Business Daily in enough detail and sufficiently in advance of the date for receipt of bids to permit interested prospective sources to submit bids. Similarly, contract awards over $25,000 will also normally be announced in the Commerce Business Daily.
- Number of Bid Sets Available. Bids will be solicited from lists of prospective sources. Rotation of source lists may be used when lists of potential sources are unreasonably long, provided that a sufficient number are solicited to ensure effective competition and that bid sets are available upon request.
- Impartiality. There will not be bias or favoritism in the solicitation for bids, evaluation and contract award.
- Auctioning. Unjustified price reductions will not be sought through repetitive requests for "best and final" bids. If adequate price competition exists, the Government will normally not ask for a price reduction from prospective contractors unless there is a material reduction in scope of work or change in terms and conditions.

Methods of Solicitation

Procurement under the proposed system will be either competitive or noncompetitive, with an absolute preference for competition. Two equally valid methods of solicitation will be used to obtain competition. They equate generally to the solicitation procedures for formal advertising and competitive negotiation. The following terms were selected to depict these methods because they are more descriptive and more easily understood by those not familiar with Government procurement:

- Bidding without discussion will be used when the Government's requirements and the terms and conditions of the solicitation can be sufficiently described to allow the timely preparation and evaluation of bids on a common basis without the need to hold discussions with bidders. A public bid opening will be held and award made to the low responsive and responsible bidder.
- Bidding with discussion will be used when it is necessary to discuss the requirement or terms and conditions after receipt of bids but prior to contract award. The bid opening will not be public. Award will be based on the evaluation factors set forth in the solicitation.

Additional innovative solicitation methods that are a combination of the above (e.g., two-step) may also be used.

New Statutory Types of Competition[20]

The proposed system contains three equally valid types

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18) In the acquisition of major systems, sophisticated advance planning is used to prioritize needs, explore alternatives and reduce risk.

19) There are many items that must be manufactured according to detailed specifications. The main idea is not to limit competition to those who are willing to manufacture to a special design, nor to prevent the Government from taking advantage of a range of products, services and ideas that the marketplace might offer.

20) Architect-Engineering services which are related to construction are procured under special legislation and are not included in this proposal.

of competition based on the nature of the need and what is available in the marketplace. These are:

- Price. Competition based on the price to the Government.
- Lowest Total Cost. Competition based on total cost to the Government, including such considerations as purchase price, and maintenance and operating costs over the useful life of the product or service.
- Multiple Factors. Competition based on price or cost and such other factors as design, performance capability, service, delivery, and technical and management ability.

Using the Proposed Types of Competition

Figure 16 depicts the criteria for each type of competition, figure 17 shows their application to the procurement process, and figure 18 shows the highlights of the proposed types of competition and methods of solicitation.

Price competition will be used when analysis of the marketplace shows equal or similar products or services available that will satisfy the agency's needs and the basis of evaluation will be price and price-related factors only (transportation costs, discounts, etc.). Award of a firm-fixed-price contract will be made to the lowest responsible bidder meeting the solicitation conditions. Price competition and award without discussion equate to formal advertising under the current system.

Lowest total cost will be used when competing products or services are anticipated to be so dissimilar as to significantly affect performance and ownership costs. There are many instances (such as in the automotive, aircraft and electronic fields) where the best value can be obtained through total cost competitions. This permits consideration of such factors as product performance, operating and maintenance costs, energy consumption, product life, reliability and safety. Thus, a particular product may be preferable, even though the initial price is higher.

In this type of competition, the agency's need is reasonably firm and the analysis decides which solution offers the lowest total cost to the Government. The kinds of competing candidates for total cost competitions are those where the products or services have been completely developed and the unit cost is predictable, but the cost of ownership may or may not be predictable. The degree of analysis required varies with the dollar value of the procurement. If the value of the procurement does not warrant consideration of ownership costs, award will be made on the basis of price. In evaluating which alternative is the best value, the contracting officer will normally be assisted by such specialists as logistics, engineering, quality and cost experts.

Fig. 16

Criteria for New Types of Competition

Criteria	Types of Competition		
	Price	Lowest Total Cost[1]	Multiple Factors[1]
Commercial products/services are available:			
• Which are sufficiently similar to decide on price.	■		
• Which are so dissimilar as to affect performance or cost of ownership.		■	■
Previously defined products/services for agency peculiar needs are available:			
• Which are sufficiently similar to decide on price.	■		
• Which are so dissimilar as to affect performance or cost of ownership.		■	■
No defined solution available or technical and/or management ability are critical			■

1) The difference between lowest total cost and multiple factors competition is that for lowest total cost, required performance is relatively fixed and the analysis centers on comparing total cost of dissimilar solutions; under multiple factors, tradeoffs are permitted between performance and cost—a more comprehensive analysis.

Fig. 17

Applying Competition To the Procurement Process

Procurement Process	**Types of Competition**		
	Price	Lowest Total Cost	Multiple Factors
Method of solicitation	Bidding with or without discussion[1]	Bidding with or without discussion[2]	Bidding with discussion
Evaluation factors	Price	Lowest total cost	Technical, price, lowest total cost or other factors
Contract type	Firm-fixed-price	Fixed-price type	Full range of fixed-price to cost types based on risk

1) Awards on the basis of price will, in almost all cases, be made without discussion after a public bid opening. In such cases, no discussions will be permitted after the opening. However, there may be instances where the Government's knowledge of the market is not adequate to allow it to commit itself unequivocally to accept the lowest bid or to foreclose the possibility of discussions with bidders before awarding a contract. In these cases, the solicitation will clearly indicate that the Government reserves the right to discuss prices, and the bid opening will not be public.

2) Awards on the basis of lowest total cost generally require discussion with one or more bidders. However the solicitation can reserve the right to make award without discussions. In those instances where it is known prior to solicitation that the factors which determine lowest total cost can be evaluated and a decision made without discussions, the solicitation should so indicate, and the bid opening should be public. In such cases, no discussions will be permitted after bid opening.

If variations in quality and ownership costs can be objectively quantified in advance, bids without discussion will be used. (This equates to formal advertising.) If they cannot, bids with discussions will be used and subjective business judgments permitted. Award of a fixed-price contract will be made to the bidder who offers the lowest total cost product or service.

Multiple factors competiton is all-inclusive. It is more complex than price or lowest total cost competition and can involve evaluation of new ideas, productivity improvements, new products and cost factors, as well as a firm's technical and management ability. It will be used when any of the following conditions apply:

- Government needs cannot be precisely described.
- There is no well-defined solution to Government needs.
- Evaluation factors for award cannot be objectively measured.
- Technical or management performance is critical.

Under these circumstances, the basis of competition is in ideas, designs and technology rather than short-range price advantage. Examples are research and development, new products and military systems or complex services. In this type of competition, the agency may still be considering what its performance should be, and trade-offs may be made between performance and cost. Discussions may be conducted with one or more of the bidders when it is in the best interest of the Government. These discussions may range from clarification of bids to substantive technical, management or cost factors.

Procedures for multiple factors competition will be tailored to the dollar value, complexity and risk of the procurement. Expedited procedures may be used for low dollar procurements, or competition may be sustained into hardware demonstration phases for high dollar pro-

Fig. 18

Competition Highlights

Drops preference for formal advertising; allows flexibility within statutory criteria to choose procurement method most suited to agency need and marketplace.

Opens up competition and permits contractor performance responsibility by shifting away from Government mandated designs.

Sheds complex rules, unnecessary paperwork and regulations.

Removes useless controls on negotiation—the statutory exceptions (15 or 17) and all their attendant paperwork.

Expands competition by limiting the use of noncompetitive procurements to seven conditions.

Separates competitive from noncompetitive and recognizes that competition takes more than one form.

Works from a new definition of competition that encourages ideas, use of new technology and product competitions.

Allows patented items to be competitive if there are alternatives.

Gives statutory recognition to innovative combinations of competitive methods of procurement.

curements. The type of contract agreed upon can range from fixed-price to cost reimbursement, depending on the risks involved.

Application of Multiple Factors Competition to Major Systems

One of the most important uses of multiple factors competition is to bring new system concepts from promise to performance. This type of competition has special significance in the early procurement phase of new major systems because:

- Competition in any form may not be feasible or economical once production of the new system begins.
- Parallel exploration of different technological approaches can be continued until a confident choice can be made for large production investments.
- Effort is focused on those key decisions that drive the agency's ultimate system investment cost, mission performance and the often enormous resources later needed to carry out the agency's mission. These key decisions include the:
  - Kind of system and operational approach to be used.
  - Particular technologies to be employed.
  - Main design features and key subsystems.

DOD's experience in the 1970's shows the following advantages of extending early competition to performance demonstration:[21]

- Better contractor designs.
- Cost overruns reduced by an average of one-third.
- Programs speeded up.
- Reduced risk of choosing the wrong design.

Special Category for Follow-On to Competition

In developing new major systems, it is sometimes necessary to invest millions of dollars in a sustained hardware design and demonstration competition before award of an initial production quantity. In such cases, the time and effort invested by the winning contractor, including investment in tooling, test equipment and plant modernization, precludes competing follow-on quantities. Procurements in this category will be identified and reported as "follow-on to competition." In other cases, where continued competition into production is feasible because of long and stable production rates and low facilities investment, follow-ons will not qualify for this special category. In any case, continued competition at the subsystem and supplier levels will be emphasized.

Controlling Noncompetitive Procurements

Although competition will always be preferred, some noncompetitive procurements are inevitable. A degree of latitude will, therefore, be permitted for specific circumstances when competition is not feasible. Noncompetitive procurement above a certain dollar threshold will normally require approval within the agency at a level higher than the contracting officer and a determination that the action is in the best interest of the Government. Also, there will be advocates for competition in the agencies to provide some check and balance on noncompetitive procurements.

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[21] Acquisition Policy Effectiveness: Department of Defense Experience in the 1970's, a report prepared for the Under Secretary of Defense for Research and Engineering, Rand Corporation, October 1979.

Conditions for Noncompetitive Procurements

Circumstances under which a noncompetitive contract may be awarded will be statutorily limited to the following:

- When the product or service is available from a single source, and no competitive alternatives are available in the marketplace.
- When a serious emergency will not permit the delay inherent in obtaining competitive bidding.
- When an award must be directed to a particular source in order to create or maintain an essential industrial capability, for purposes of industrial mobilization, or because it is impracticable or uneconomical to obtain competition for follow-on procurements.
- When a procurement source is required by international agreement or directed by a foreign government.
- When required by statute to be obtained from or through another Federal agency or a specific source.
- When disclosure to more than one bidder would jeopardize the national security.
- When it is determined by the head of the agency that it is impracticable to obtain competition.

The method of solicitation will be bidding with discussion and the basis for award will be price, lowest total cost or multiple factors.

Strengthening Management Control

To further limit noncompetitive actions, as well as to encourage more substantive competition, the proposed system provides that agency Procurement Executives will devote greater efforts to expanding competition. The greatest effort should be devoted to the early part of the procurement cycle to see that opportunities for competition are not lost or foreclosed by poor planning, uncoordinated agency decisions or failure to analyze the marketplace to ascertain what is available.

The GAO recently sampled Defense and civil agency noncompetitive procurements. Both studies show that competitive opportunities were missed in one-fourth or one-third of the cases sampled, depending on the particular agency. Reasons for missed competitive opportunities included:

- The contracting officer accepted recommendations of technical personnel on the assumption that they were aware of what was available in the marketplace.
- The contracting officer accepted end-user requests for particular items based on user comments about contractor capabilities and availability of competition.
- The contracting officer accepted requests for particular items from highranking officials.[22]

Other recent GAO studies show that although some degree of competition was reported in particular procurements, the solicitation restricted who could bid, or what product design could be offered, or how the product itself could be manufactured or contained a combination of such restrictions. In one case, involving production of U.S. Savings Bonds, for example, removal of the restrictions opened the competition to companies having more advanced technology and automated equipment. The result was a $1.3 million annual reduction in a $3 million contract plus a better quality product.[23]

There is no assigned or generally recognized organizational responsibility for ensuring that competition is either sought or achieved. The procurement organization looks to the agency's technical personnel or "customer" to analyze the marketplace and to make its requirements known in a timely manner, while the technical personnel look to the procurement organization to draft an adequate solicitation and obtain competition within the confines of the specified schedule. Unfortunately, there may be little motivation or initiative to seek competition because there is no assigned responsibility or accountability for obtaining competition.

Advocates for Competition

The proposed system calls for a competition advocate. In some cases, Procurement Executives may assume this role. In other cases, conditions at major procuring centers may require a full-time advocate.

The advocate will focus on the early part of the procurement cycle when need statements are drafted and funds are requested. At this stage, the advocate will see that opportunities for competition are not foreclosed by restrictive need statements, underfunding, unnecessarily detailed specifications, poor planning or arbitrary agency action. In addition, the advocate will ensure that:

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[22] These are Defense study results in GAO Report PLRD-81-45 of July 29, 1981. We understand the civilian study results, showing that even greater competitive opportunities are being missed by civil agencies, will be published in a few months.

[23] See GAO study (GGD-80-32, Sept. 25, 1980) on the Department of Treasury procurements of U.S. Savings Bonds.

- Program managers participate in introducing competition.
- Factors or problems that inhibit competition, especially as they affect small business, are surfaced and addressed, and corrective action taken.
- Reasonable competitive alternatives to a proposed noncompetitive award have been considered.
- Reliable data are being reported to top management about the extent of competition actually obtained in procurement actions.
- Experience data and new techniques to obtain competition are exchanged with other purchasing activities.

Ensuring Reasonableness of Prices

The proposed procurement system will include two features to ensure reasonableness of prices in noncompetitive or follow-on to competition procurements.

- First, in any follow-on to competition contract, the chosen solution and its cost, in most cases, will have been derived from an earlier competition that was sustained into hardware demonstration. Therefore, there will be a baseline for pricing follow-on procurements that cannot be subjected to further competition, as in the case of major systems requiring large initial investments and many years to develop.

- Second, the current Defense and NASA Truth-in-Negotiations Act will be expanded Government-wide and focused on noncompetitive procurements above a certain threshold. There will be precontract reviews of contractor cost proposals, as well as selective postcontract audits to see if any defective pricing occurred. If so, the proposed legislation will enable the Government to recover any amounts by which prices are overstated.

REPORT BY THE

Comptroller General

OF THE UNITED STATES

Progress Of Federal Procurement Reform Under Executive Order 12352

The President issued Executive Order 12352 in March 1982 to reform Federal procurement by

--establishing a system in each agency to manage procurement,

--simplifying the procurement process,

--developing a professional work force, and

--increasing use of competition.

A comprehensive plan has been developed and considerable work to design the reforms is ongoing. In addition, an official, referred to as the Procurement Executive, has been appointed in each agency to manage its procurement system. However, agencies have not given Procurement Executives the complete system responsibilities or authority to carry out the Executive order's reforms.

This report recommends several executive and legislative actions to improve agency response and strengthen reform leadership.

UNITED STATES GENERAL ACCOUNTING OFFICE

GAO/PLRD-83-88
JUNE 17, 1983

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-211529

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is our first report in response to your Subcommittee's request that we keep it informed on progress of procurement reform under Executive Order 12352. It reviews the background and goals of the Executive order, assesses agencies' responses to date, and recommends Executive and Legislative actions to improve implementation.

As arranged with your Office, copies of this report are being sent to interested congressional committees, the Director, Office of Management and Budget, the Administrator for Federal Procurement Policy, heads of executive agencies and others having management responsibility for the matters discussed. Copies will also be made available to other interested parties upon request.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

REPORT BY THE
COMPTROLLER GENERAL

PROGRESS OF FEDERAL
PROCUREMENT REFORM UNDER
EXECUTIVE ORDER 12352

DIGEST

The President issued Executive Order 12352 in March 1982 to reform Federal Procurement. The Executive order has four goals

--establishing a system in each agency to manage procurement,

--simplifying the procurement process,

--developing a professional work force with latitude to use business judgment and initiative, and

--increasing the use of competition.

The Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, has asked GAO to report during this Congress on the progress achieved and on any recommendations for improvement.

In its review, GAO visited twelve agencies including the largest ones. Collectively, they spend 97 percent of Government procurement dollars. Twelve additional agencies responded to written inquiries on the status of their Executive order implementation.

IMPLEMENTATION OF THE EXECUTIVE ORDER

As directed by the Executive order, the Office of Management and Budget and its Office of Federal Procurement Policy are working jointly with agencies to develop broad policy guidance for the reforms. They have developed a comprehensive plan and established interagency task groups who are designing guidance for the system reforms. (See pp. 5-7.)

Approved guidance on one key system reform has been available for implementation since July 1982. This first reform lays the foundation for the remaining ones. It provides for a Procurement Executive in each agency with system-wide responsibilities and authority. This authority may be delegated to operating levels.

Even though the agencies have appointed Procurement Executives, most have not implemented the policy guidance that governs Procurement Executive duties and authority. They also have not delegated authority to operating levels where the reforms must be made. (See pp. 10-14 and 19-21.)

PROBLEMS HINDERING REFORM IMPLEMENTATION

The broad based participatory approach being used to implement the order is generally sound. However, GAO has observed several problems.

First, the commitment of agency heads to the reform effort has not been demonstrated, and agency officials interviewed by GAO believe they do not have to follow the policy guidance stemming from the Executive order. (See pp. 8 and 26.)

Second, feedback from the agencies on problems in implementing the reforms is insufficient. Progress reports to the President have tended to stress accomplishments. These reports would be more effective if they also identified problems and actions taken to improve the situation. (See p. 24.)

Third, the interagency task groups established to design the reforms are experiencing difficulties in meeting their objectives because members are required to give priority to their responsibilities at the agencies. (See p. 8.)

Fourth, the executive focal point of leadership does not have decisionmaking authority to carry out its responsibilities. (See p. 25.)

THE OFFICE OF FEDERAL PROCUREMENT POLICY NEEDS DECISIONMAKING AUTHORITY

In 1979, the Congress removed the Office of Federal Procurement Policy's authority over agency regulations pending development of a Uniform Federal Procurement System. The Policy Office developed this system last year.

The authority should now be restored. It is especially needed in view of the fact that the Executive order did not establish a strong implementing mechanism or give the Policy Office decisionmaking authority. Further, there is no decisionmaker among the agencies responsible for putting together a simplified, Government-wide procurement regulation. (See p. 26.)

Over the last few years the Office of Federal Procurement Policy has assumed a new role of procurement system development and assistance. GAO believes the Congress should update the Policy Office's statute to (1) recognize this new role and (2) authorize the Office to prescribe criteria for acceptable procurement systems. (See p. 26.)

To better assure agency head performance in support of these system reforms, the management obligations imposed on the agencies by the Executive order should also be covered by this statute. (See p. 28.)

In addition, the Office of Federal Procurement Policy should have the authority to test initiatives aimed at streamlining the procurement process. (See p. 28.)

ADDITIONAL ISSUES

As the Executive order charges agency heads directly with implementation, they are responsible for determining how effectively the order's reforms are being implemented in their respective agencies. Internal agency review and feedback are needed to fulfill this Executive order responsibility.

Once the agencies implement their procurement systems, the Executive order requires a certification that these systems meet approved criteria. The GAO report includes some suggestions to achieve objective evaluation of the procurement system, effective resolution of shortcomings, and followup. (See p. 25.)

Another agency responsibility under the Executive order is the development of a professional work force. Since only 4 of the 12 agencies GAO visited had career management programs and the educational level of new contracting officers is declining, early attention should be given this requirement. (See pp. 16-19.)

RECOMMENDATIONS TO CONGRESS

The Congress is now considering reauthorization of the Office of Federal Procurement Policy and the extent of its authority. The Congress should provide:

(1) Decision authority for the Policy Office to

prescribe, where necessary, Government-wide criteria for an acceptable procurement system,

oversee the new Government-wide procurement regulation, and

conduct tests of innovative concepts and methods to streamline procurement and increase competition.

(2) Recognition of the role of assisting the agencies in developing their procurement systems.

(3) A statutory basis for the agency management responsibilities spelled out in the Executive order.

RECOMMENDATIONS TO OFFICE OF MANAGEMENT AND BUDGET DIRECTOR

The Office of Management and Budget Director should

--Ensure that agency administrators are aware of their responsibilities to

(1) establish a management structure throughout their agencies with complete procurement system responsibilities,

(2) dedicate enough time and talent to designing reform guidance,

(3) adopt the substance of reform guidance being issued under the Executive order, and

(4) conduct an internal review of the effectiveness of agency implementation.

--Use progress reports to the President on the Executive order as a vehicle to encourage implementation by reporting both progress and problems and furnish copies of these reports to the Senate Governmental Affairs and House Government Operations Committees. The reports should be based upon the actual agency response to guidance stemming from the Executive order. Agency feedback for this report should describe the extent of implementation and reasons for any delay.

AGENCY COMMENTS

The Office of Management and Budget appraised the report overall as good and agreed with many of the recommendations. It disagreed with two recommendations that would give additional authority to the Office of Federal Procurement Policy. It said regulatory authority and the authority to prescribe criteria for acceptable procurement systems would permit the Executive Office of the President to interfere with agency head responsibilities. (See p. 30.)

GAO believes the Policy Office will need authority to oversee a new Government-wide regulation and prescribe system criteria if it is to have a leadership role in formulating basic rules for the new system. While existence of Government-wide criteria would affect the range of discretion available to each agency to devise their procurement systems, these criteria will be formulated with full agency participation and with opportunities to adjust based on operating feedback. GAO does not consider the issuance of basic criteria that governs the general operating framework of procurement systems as an unwarranted interference with agency management prerogatives.

Deregulation of Government Management

Federal Procurement

Interim Report

Panel of
National Academy of Public Administration

March 1983

This Interim Report covers only one of several functions being studied by a Panel appointed by the National Academy for 15 sponsoring agencies under Contract No. DTOS59-82-C-00057. The Final Report of the Panel will cover all of the functions and selected cross-cutting issues. It may alter some of the findings and recommendations of this Interim Report.

PART VII—FUTURE OVERSIGHT AND LEADERSHIP OF THE PROCUREMENT FUNCTION

On April 30, 1982 proposals were submitted to Congress as part of the OFPP report on the Uniform Procurement System:

- To reauthorize the Office of Federal Procurement Policy whose current statute (P.L. 96-83) expires on September 30, 1983.
- To amend the existing Armed Services Procurement Act and the Federal Property and Administrative Services Act so as to "resolve unnecessary inconsistencies between them, to incorporate the substantial changes reflected earlier in the (OFPP) proposal, and thereby to produce a more responsive and effective procurement system."

The net effect of the proposals is to perpetuate the present role and authority of OFPP, DOD, GSA and NASA—leaving regulatory authority in these agencies as originally assigned by Congress, subject to "overall leadership and coordination" by the Administrator of OFPP who would continue, as at present, to have authority to develop and promulgate government-wide procurement policies. Further the Director of OMB would have authority to rescind the promulgation by any agency of any final rule or regulation governing procurement. The new reauthorization proposal would sunset on September 30, 1988.

In our discussions with agency and Congressional staff the concerns or issues expressed by some of them included the following:

- Is statutory continuation of OFPP needed?
- Should it have more authority (i.e., full regulatory) or less authority—or have only such authority as any other OMB component has by virtue of internal organization assignments?
- Should the two primary statutes be merged, as originally proposed by COGP and widely debated in Congressional hearings during the past decade? There seems to be no disagreement with the specific amendments which are now proposed (or which would be incorporated in a single statute) to establish revised thresholds for small purchases, to revise the rules of competition and bid evaluation, to authorize multi-year procurement, and permit greater flexibility in the use of annual appropriations, including "cross-year authority" for service contracts.
- Should the roles of the central and operating agencies be revised in any significant respect?

The Academy Panel assessment of these issues has been made in the light of its exposure to wide-ranging views both within and outside of government, and a first-hand look at the progress which is being made. Our conclusion strongly favors continued vigorous progress on the courses of action now underway under Executive Order 12352, with the modifications outlined in Parts IV, V, and VI of this report. We have three specific proposals to offer to the debate now in progress on future legislation, on which hearings are expected in the next few months:

PROPOSAL NO. 1: REAUTHORIZE OFPP, BY STATUTE, ESSENTIALLY IN ITS PRESENT FORM, BUT STRENGTHEN ITS MANDATE IN AREAS DEALT WITH IN THIS REPORT.

Seldom in government has as high a degree of participative management existed as prevails today in the procurement function—with 26 agencies and 131 handpicked experts at work on plans of action to reform the process. The stakes are high—not only for government at a time when cost reductions are desperately needed ($5 billion is OFPP's estimate of the annual impact of the emerging reforms)—but also for the sectors of the economy which serve or depend on government contracts—as well as the large universe of subcontractors and grantees who are heavily influenced by the efficiency of federal procurement.

It is apparent that the current task group efforts cannot be completed by September 30, 1983—the current sunset date for P.L. 96-83—and that at best the implementation phase for most will just be beginning, with several years ahead to translate the reforms into reality, government-wide.

Leadership from a central federal office is essential. OMB today is the appropriate mechanism for this type of authoritative direction, especially since procurement involves over 20 percent of the federal total obligations incurred and is perhaps the largest single item of discretionary spending.

The issue of whether OFPP needs statutory recognition to be effective deserves debate. Its status, headed by a Presidential appointee confirmed by the Senate, is unusual. The Commission on Government Procurement labored over this issue at length and concluded that the history of management-oriented staff functions in OMB argued for separate statutory recognition and accountability both to the President and the Congress. Some have suggested that a simpler charter in law might only stipulate that OMB maintain such an office, with an adequate budget, and leave all other definitions of authority to Executive discretion.

We conclude that while the Academy Panel would not normally support legislation which specifies internal elements of an organization, the case for assuring a strong supportive leadership role while procurement reforms are underway is overwhelming. Therefore, OFPP's role should remain assured and unambiguous, by statute. The need for an unambiguous identity and adequate budget support, currently provided by OFPP, is essential if we are to continue to have an effective focal point for new initiatives and overall policies—while maintaining the present philosophy of participative management. The question of the long-term organizational structure will be considered when the Academy Panel develops its final report.

Particularly important objectives of a statutory reauthorized OFPP are:

— First, continue a leadership role which allows the agencies full authority for, or participation in, developing the regulations which they must follow. This has been the key to success by the present leadership of OFPP. Hence, we subscribe to leaving regulatory authority in DOD, GSA, NASA, subject only to OMB veto, if needed.

- Second, complete the present task group action plans, and their implementation.

- Third, grant test and demonstration authority, under case-by-case supervision from the Director of OMB and the Congress, to engage in innovative research involving statutory waivers, as discussed further below.

- Fourth, strengthen OFPP's charter, budget and staffing to enable it to act on the opportunities revealed by this report.

The areas in which OFPP's charter requires strengthening, in our view, are:

- Continuous review of the procurement aspects (not program aspects) of all socio-economic programs, as outlined in Part IV of this report, and the promulgation of guidance material and procurement policy directives when needed.

- Professional leadership of the "Productivity Enhancement Program". (See Part V of this report.)

- Involvement in the systems certification process to assure that workforce factors are considered, and that objective review teams are formed to advise agency officials on their strengths and weaknesses. (See Part VI of this report.)

- Agency-by-agency assistance in planning career management programs, budgets, and contracting officer qualification—warranting programs, to meet the needs of individual agencies under Executive Order 12352. (See Part VI of this report.) Such responsibilities should remain in OFPP if FAI is transferred to GSA (as is now being considered), and OFPP should be staffed with a cadre of experts in procurement management who can perform such services.

PROPOSAL NO. 2: PRESS FOR TEST AND DEMONSTRATION AUTHORITY BROAD ENOUGH TO PERMIT MAJOR STATUTORY AND REGULATORY WAIVERS, FOR EXTENDED PERIODS, IN WHOLE AGENCIES

One of the most productive opportunities for future reforms of procurement (following the excellent precedent of the Civil Service Reform Act) is authority to try new practices which are carefully planned and controlled. This concept leads the Panel to strongly recommend that OFPP's reauthorization act contain test and demonstration authority broad enough to permit major statutory and regulatory waivers, for extended periods, in whole agencies. Provisions for piloting more efficient and cost effective techniques would be similiar to those included in the Civil Service Reform Act which provides for advance notification to Congress and opportunity for public comment. The Academy Panel feels that the test and demonstration authority may be its most important recommendation in the procurement area since the types of matters which should be considered have long-range potential, affecting every aspect of the procurement process. Several examples are:

- Tests of new personnel practices, such as the "Rank in Person" technique being tested by the Navy at China Lake for professional staff. One diagram of such a career development plan is portrayed in Exhibit 10. (This test could possibly be begun immediately if OPM granted authority under the Civil Service Reform Act.)

- Wide-ranging demonstration experiments in new procedures and automation to simplify paper work involved in bidders lists, solicitation preparation, use of standard contract clauses, electronic ordering, etc. One authority estimates a potential saving of at least ten percent in administrative costs...perhaps over $100 million.

- Revised practices in fostering socio-economic programs through procurement, such as discussed in Part IV, based on experiences of government corporations and others.

- Greater discretion to agency heads to (1) waive cost studies in connection with A-76 decisions; or (2) choose other variances from A-76, to achieve optimum improvements in organizational productivity.

PROPOSAL NO. 3: AMEND THE EXISTING BASIC STATUTES, AND ELIMINATE INCONSISTENCIES, AS PROPOSED BY OFPP, UNLESS CONGRESS CAN ESTABLISH A "JOINT PROCUREMENT POLICY COMMITTEE" IN EACH HOUSE

The principal policy issue today revolves around the definition of types of competition, methods of solicitation, and evaluation factors. A separate bill to accomplish these revisions (S.338) has been introduced by Senator Cohen in the 98th Congress.

A list of the principal inconsistencies between the Armed Services Procurement Act, and the Federal Property and Administrative Services Act, appears in Appendix F. At a minimum, it is hoped that these actions can be enacted promptly in order to allow full progress under Executive Order 12352, with particular stress on increasing sound competitive procurement.

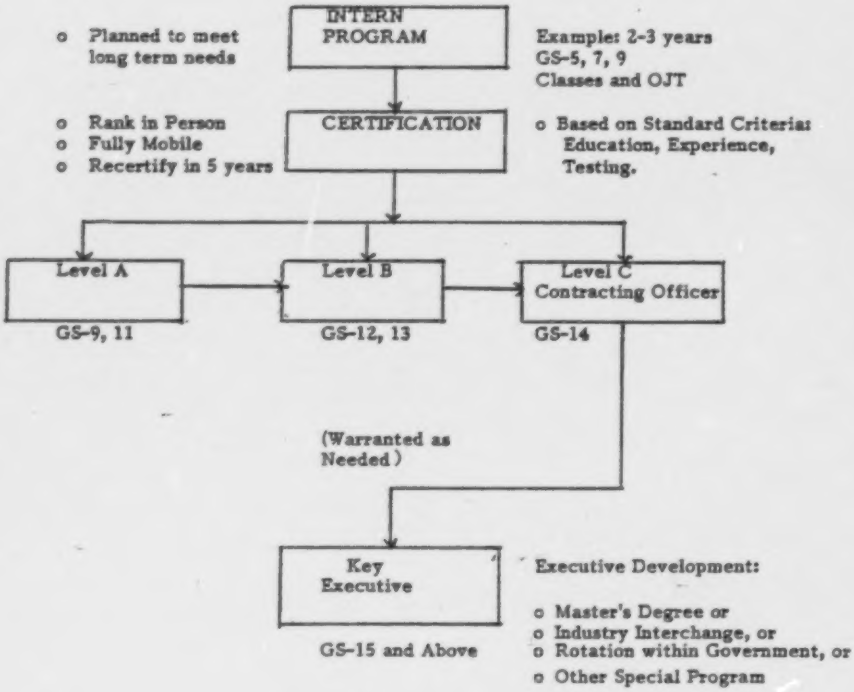
At longer range some civilian agencies and outside experts hope for the enactment of a single statute in the interest of consistency and efficiency of use. The advent of the Federal Acquisition Regulation (FAR) will assist in achieving this objective, but the transition to its implementation will necessarily be an extended process.

We found considerable skepticism that a single statute can become a reality unless Congress itself can form some type of "Joint Procurement Policy Committee" in each House to consolidate the interests of the key Committees, without infringing on the authorization and appropriation processes which must proceed through separate committees.

Exhibit 10

Test Concept for "Rank in Person" of Procurement Personnel

(To be Conducted Under Authority of the Civil Service Reform Act and Reauthorization Statute for the Office of Federal Procurement Policy)


INTERN PROGRAM
CERTIFICATION
Level A
GS-9, 11
Level B
GS-12, 13
Level C Contracting Officer
GS-14
(Warranted as Needed)
Key Executive
GS-15 and Above

- o Planned to meet long term needs

Example: 2-3 years
GS-5, 7, 9
Classes and OJT

- o Rank in Person
- o Fully Mobile
- o Recertify in 5 years

- o Based on Standard Criteria: Education, Experience, Testing.

Executive Development:

- o Master's Degree or
- o Industry Interchange, or
- o Rotation within Government, or
- o Other Special Program

PROPOSAL NO. 4: CLARIFY THE ROLES AND RELATIONSHIPS OF THE KEY AGENCIES INVOLVED IN THE CONDUCT OF FEDERAL PROCUREMENT, AND IN THE MANAGEMENT OF POLICIES AND FUTURE REFORMS.

Exhibit 11 portrays the principal participants in the conduct of federal procurement and the roles that they have been assigned by law or Executive Order. A brief review of these roles and relationships is provided below, together with improvement opportunities for OFPP-Agency attention based on our findings:

— The Cabinet Council on Management and Administration represents a new and unique forum for reporting periodically to the President on the progress being made in basic reforms and in achieving Presidential goals such as the recently-announced awards to minority businesses in the next three years ($15 billion). Settlement of issues such as the GS-1102 standard, while a micro-management matter, is appropriate when it reaches the intensity of the current debate at such a high level.

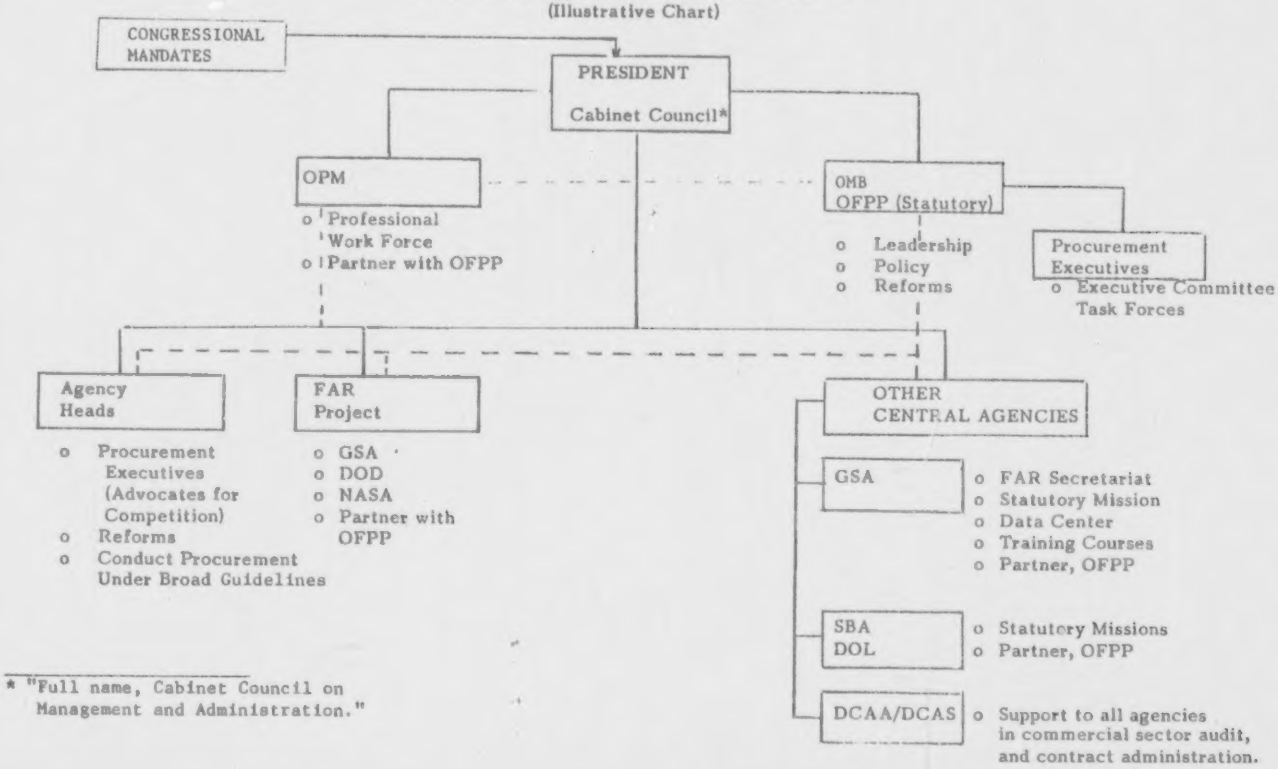
  — Opportunity: The Procurement Executives are the keys to major reforms in the individual agencies. Their duties, as spelled out in the model charter appearing in Appendix D, are far reaching. These executives need support, guidance and encouragement in the first months of their existence if they are to fulfill their mission. It is urged that the Administrator of OFPP request the Cabinet Council on Management and Administration (or its Chairman) to meet with the Procurement Executives in the near future to discuss their objectives, and inspire the same kind of collegial approach to government-wide improvements that flows from the President's Committee on Integrity and Efficiency (which has brought the Inspector Generals together so effectively) and the meetings of the Assistant Secretaries for Management.

— OFPP—is the only full-time focal point for seeking innovations and guiding reforms in the procurement process, including workforce improvements. Its key roles should be technical assistance to agencies who need help in planning and justifying career development programs and adequate budgetary support;* serving as the the catalyst and the spokesperson to the President and the Congress on progress and problems needing their attention. The Procurement Executives are OFPP's key link to the agencies.

  — Opportunity: The coordination of contracts and grants policy at the OMB level is in need of attention. OFPP is limited to procurement under grants. Other OMB offices are concerned with intergovernmental affairs and financial management. GAO has reported that "Agencies Need Better Guidance for Choosing Among Contracts, Grants, and Cooperative Agreements."** Grants awards were $110 billion in FY 1981.

Exhibit 11

Roles of Key Agencies in Federal Procurement
(Illustrative Chart)


CONGRESSIONAL MANDATES
PRESIDENT
Cabinet Council*
OPM
o Professional Work Force
o Partner with OFPP
OMB
OFPP (Statutory)
o Leadership
o Policy
o Reforms
Procurement Executives
o Executive Committee Task Forces
Agency Heads
o Procurement Executives (Advocates for Competition)
o Reforms
o Conduct Procurement Under Broad Guidelines
FAR Project
o GSA
o DOD
o NASA
o Partner with OFPP
OTHER CENTRAL AGENCIES
GSA
o FAR Secretariat
o Statutory Mission
o Data Center
o Training Courses
o Partner, OFPP
SBA
DOL
o Statutory Missions
o Partner, OFPP
DCAA/DCAS
o Support to all agencies in commercial sector audit, and contract administration.

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* "Full name, Cabinet Council on Management and Administration."

- Opportunity: The future status of Circular A-109 has been reviewed by a Reform '88 subgroup which recommended consideration to rescinding the present Circular and reissuing it as a policy-guidance document. OFPP should give more attention to simplifying its application in agencies where the process is rarely used.

— The Operating Agencies actually conduct all federal procurements and should enjoy flexibility under government-wide policy guidance and direction. Their newly designated "Procurement Executives" also serve as the "Advocates for Competition," and are the key link to OFPP and its reform initiatives, in both policy and system areas.

DOD because of its vast size and expertise plays a very special government-wide role. It is the major trainer of federal procurement personnel. It has a unique role in developing policy for Major System Acquisitions. Along with NASA and DOE it has the primary role in developing and advocating procurement policy for Research and Development. Along with GSA, DOD has always been the innovator in developing policy and procedure in the procurement of commercial type items; and it is the cataloguer and developer of technical specifications for all commodity items. With GSA it is the major player in FAR development and will be at least an equal player in its maintenance.

— The FAR Project, is now well advanced under a Memorandum of Agreement signed August 2, 1982, (See Appendix P). It is an ongoing responsibility of the three agencies with regulatory authority—DOD, GSA and NASA. OFPP monitors this project and should assure that implementation plans are adequate in each agency. GSA will operate the FAR Secretariat which has the permanent maintenance responsibility.

— OPM—has, first, a statutory responsibility for personnel standards, and, second, a mandate from the President to consult with agency heads to "ensure that personnel policies and classification standards meet the needs of the executive agencies for a professional procurement work force."

- Opportunity: It is essential that OPM view its role in the second area as that of a partner with OFPP and FAI in the planning and implementation of positive programs of training, career development and executive development. At a minimum it should positively encourage and creatively support such efforts in the agencies. Today OPM's attitude and support is considered highly negative by the procurement community. The resolution of the problem on hiring of college graduates may be among the most urgent near term problems.

— GSA, has a number of important operating roles in addition to the preparation and maintenance of FAR. These include its statutory mission for space, common supplies and equipment, and ADP. It operates the Federal Procurement Data Center for OMB, and runs the training programs which serve all agencies in the area of property, supply and procurement.

— Opportunity: GSA and OFPP should work as partners in developing better plans for buying common items through coordinated arrangements, where economies of scale or better service to agencies can be achieved. The current project between GSA and Commerce to develop expanded customer support through "Customer Supply Centers" sounds promising.

— SBA and the Department of Labor, each have specialized roles to play in the procurement process as a result of their statutes. SBA is directly involved through its network of small business representatives at major procurement activities, and its participation in the 8(a) program as the prime contractor. In recent pilot programs at three Air Force Logistics Centers, SBA has been highly successful in "breaking out spare parts" for competition by small business thus reducing DOD costs (over 38%) and improving small business opportunities.

— Opportunity: As pointed out in Part IV, OFPP should give direct attention to improving procurement practices in programs under SBA and DOL statutes. Large economies, and reduced procurement lead times appear possible. Strong support for programs, like spare parts breakout, should receive priority attention by OFPP.

— DCAA-DCAS, These large agencies were originally created to serve DOD procurement offices both in the pre- and post-award phases. Increasingly, civilian agencies have become reliant on them due to the dearth of such expertise outside of DOD.

— Opportunity: Timely audit support, especially in the pre-award stage can reduce lead time and result in better pricing. Two civilian agencies reported that such audits were now taking 45 to 60 days—about one month more than desired. Broadening the DCAA—DCAS missions to serve all agencies in commercial sector contracts, with adequate resources to assure such support—would be a highly productive investment. OMB should take the leadership in assigning such responsibilities.

In summary, our review of the future leadership and oversight issues has led to four proposals:

1. Reauthorize OFPP, by statute, essentially in its present form, but strengthen its mandate in the areas dealt with in this report.

2. Assure that OFPP's test and demonstration authority is broad enough to permit major statutory and regulatory waivers, for extended periods, in whole agencies.

3. Amend the existing basic statutes to eliminate inconsistencies, as proposed by OFPP, unless Congress can establish a "Joint Procurement Policy Committee" in each House.

4. Clarify the roles and relationships of the key agencies involved in the conduct of Federal Procurement and in the management of policies and future reforms. Several opportunities for early attention by OFPP and the agencies are noted.

A Concluding Suggestion

Federal procurement is a complex and little-understood area, considered by many as a "dull" subject, beset with laws, rules and regulations. The subject, in fact, is one of high change and challenge to those involved in it. More important it is a field of almost endless opportunities for economies and greater effectiveness.

It is proposed that a major educational project, sponsored by Reform '88, be devoted to dramatizing these opportunities for the public and the personnel of government. A two-day conference of leading speakers from the Executive Branch, the Congress, the states, the private sector and academia might be held with White House endorsement. In addition to the conference—whose major thrust should be how to avail the nation of better performance in the expenditure of 20% of the budget—there should be a number of educational exhibits by 20 to 30 agencies of typical purchases; a special exhibit by SBA of its programs to assist small and minority owned businesses; a number of exhibits on the application of automation to the process, including particularly electronic ordering of critical items. Examples of ingenious improvements should be featured, such as (1) obtaining competition on items formerly purchased sole source; (2) using commercial specifications and distribution facilities; (3) identifying young professionals and putting them through "co-op," intern and career developmental programs; (4) illustrating how plant representatives and inspectors protect the government's interests; (5) portraying how contractor technical personnel work with government users at military bases, on board ships, and in foreign countries to indoctrinate users in the operation and care of new equipment; (6) describing how the government-industry team works together in such exotic achievements as the Space Shuttle.

Such an opportunity to tell the procurement story, as well as to pursue opportunities for further break-throughs in the procurement process, could be a major contribution.

2 AUG 1982

MEMORANDUM OF AGREEMENT (MOA)

SUBJECT: FAR Implementation

This records the mutual understandings and commitments of the undersigned principals with respect to FAR implementation.

The Department of Defense (DoD), the General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA) shall continue their joint efforts to implement the FAR. Every effort will be made to meet the following milestones:

o A product, consisting of completed Phase II effort as of 1 November 1982 and Phase I products that have yet to undergo Phase II review, will be made available to GSA by 1 November 1982 for printing, and will be delivered (minimum quantity of 150 copies each) to the Defense and CAP Councils and NASA NLT 1 January 1983 for completion of their respective executive reviews.

o Final Phase II will be delivered to the Councils by 31 March 1983.

o FAR will be published in the Federal Register by 1 July 1983.

o Accomplish necessary familiarization and training to achieve effective date of 1 October 1983.

I. TRANSITION ORGANIZATION AND RESOURCES

o The FARPO will be disestablished 30 September 1982.

o A FAR Group will be established 1 October 1982. It will initially be composed of the following resources:

Army: two professionals and one clerical
Navy: two professionals and two clerical
Air Force: three professionals

DLA: one professional and one clerical
NASA: one professional and one clerical
GSA: seven professionals and one clerical*

* GSA has promised one additional professional, if available, and a total staff of 12 once the FAR is published.

- The FAR Group will be preferably located at the current FARPO facility. It will remain available until 1 July 1983, but in no event later than 1 October 1983.

- The FAR Group, as its top priority, will be responsible for completion of Phase II product, including FAR baselining (i.e., currency with latest regulatory coverage).

- The FAR Group will also assist the Councils in accomplishing their respective executive reviews and in conducting necessary orientation and training activities to facilitate FAR transition in accordance with the Annex (Attachment 1).

- GSA will be responsible for providing the physical facilities for housing the FAR Group (office space) and for continuation of the Word I computer contract effort. GSA and DoD will provide the necessary support staff.

II. ORGANIZATION FOR FAR MAINTENANCE

- The organization for FAR maintenance shall be as described by the attached chart (Attachment 2).

- NASA will participate on the DAR Council for a trial period once the FAR becomes effective.

- GSA will chair the CAP Council and provide legal counsel.

- The FAR will be maintained by the CAP Council and the DAR Council. The operating guidelines of the DAR and CAP Councils are described in the Annex. Responsibility for maintenance of the FAR will be apportioned by the two Councils. Operating guidelines pertaining to disposition of FAR cases, coordination procedures, etc. will be developed by the Councils.

- Deviation authority will be vested in the respective Councils without regard to apportioned maintenance responsibility.

- GSA will provide a FAR Secretariat expected to consist of six people (two professionals, two administrative and two clerical) and physical resources for the FAR secretariat. GSA will pay for preparation of the FAR for publication, including publication as necessary in the Federal Register.

- The FAR Council will remain intact, to be convened from time to time to address appropriate matters. While it may serve as a forum for discussion and appeal of appropriate matters, it will not have directive authority.

- DoD, GSA and NASA will jointly maintain the FAR. Agencies requiring supplemental procurement regulations are responsible for individually maintaining these supplements.

- FAR revisions shall be printed in the Federal Register, and to the maximum practicable extent, prior to the effective date.

III. PENDING ISSUES FOR RESOLUTION

- Contribution of resources to the FAR Group by the civil agencies other than GSA and NASA.

- The various agencies and DoD components must identify funds in their respective FY 1983 budgets to purchase the FAR.

William A. Long
DoD

GSA

S E Hopkins
NASA

Attachments:
1. Annex
2. Chart

ANNEX TO MOA

SUBJECT: Councils' Operating Guidelines (DoD/GSA)

TRANSITION PERIOD

1. Councils will allocate all FAR subject areas to executive review groups composed of Council members, FAR Group members and subject area specialists, as appropriate.

2. Executive review groups will utilize Phase I product together with other planning documents or data available in preparation for receipt of completed Phase II product or any earlier receipt of stand-alone segments.

3. After receipt of Phase II product, each Council will conduct an executive review of entire FAR and develop any needed changes.

4. During executive review, the Councils will make only changes that are necessary to assure that FAR accommodates the needs of the acquisition community. Existing FAR language will be retained unless there is a compelling reason for change.

5. During executive review, Councils will coordinate results and resolve differences.

6. In the event of a dispute, the issue will be elevated through the acquisition principals of DoD, GSA and NASA to respective agency heads for resolution.

7. Assistance by OFPP may be sought to facilitate resolution of differences.

8. Completed, coordinated FAR will be forwarded to GSA for publication.

9. Upon publication, the Councils will conduct appropriate orientation and training to facilitate FAR implementation.

MAINTENANCE

DoD and GSA shall promulgate charters for the internal operations of their respective Councils. Each Council shall have the following FAR maintenance responsibilities:

a. Reviewing FAR cases and developing proposed coverage utilizing appropriate subcommittee and/or lead agency.

b. Coordinating proposed coverage with the other Council.

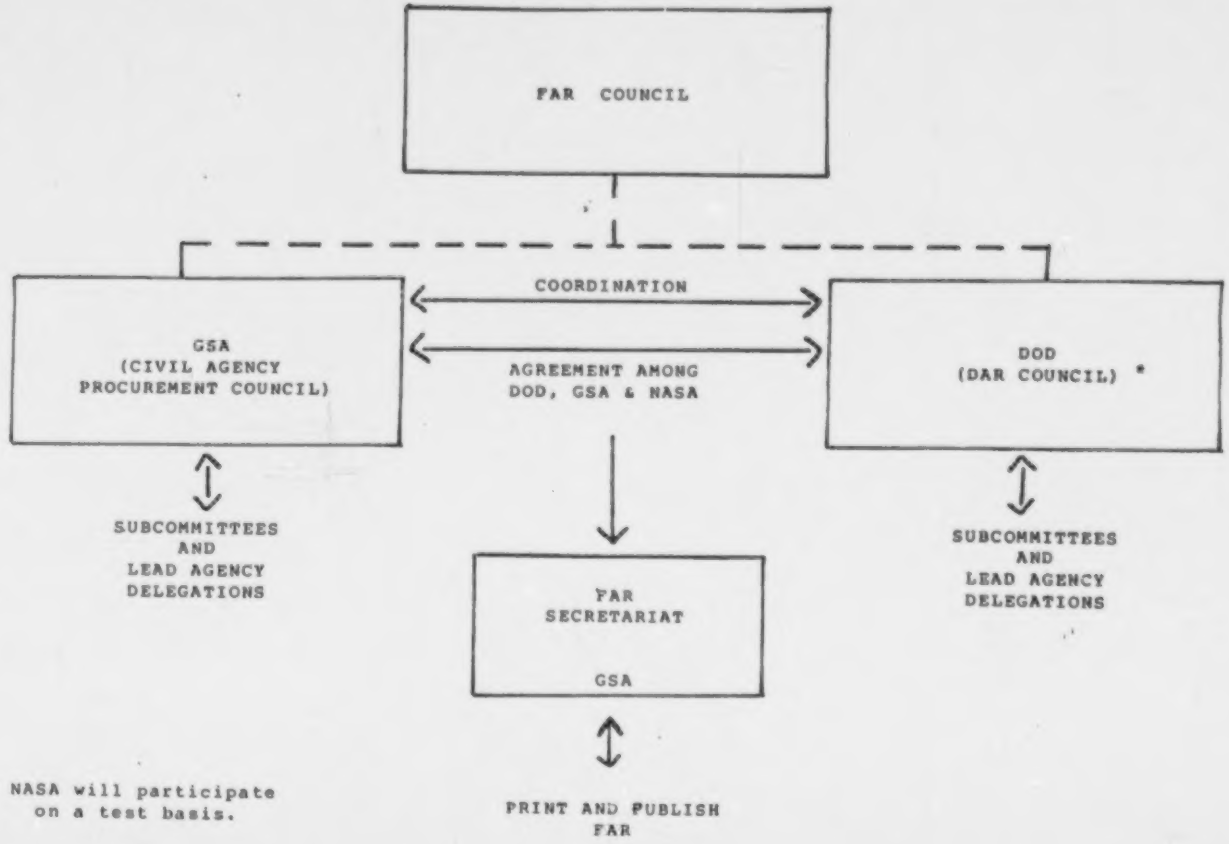
c. In the event of a dispute, the issue will be elevated through the acquisition principals of DoD, GSA and NASA to respective agency heads for resolution.

d. Assistance by OFPP may be sought to facilitate resolution of differences.

e. Submitting notices of proposed major or substantive changes to the FAR Secretariat for publication in the Federal Register.

f. Considering comments in response to Federal Register notices.

g. Submitting final FAR revisions to FAR Secretariat for printing.


FAR COUNCIL
GSA
(CIVIL AGENCY
PROCUREMENT COUNCIL)
COORDINATION
AGREEMENT AMONG
DOD, GSA & NASA
DOD
(DAR COUNCIL) *
SUBCOMMITTEES
AND
LEAD AGENCY
DELEGATIONS
FAR
SECRETARIAT
GSA
SUBCOMMITTEES
AND
LEAD AGENCY
DELEGATIONS
PRINT AND PUBLISH
FAR

* NASA will participate on a test basis.

OFFICE OF THE UNDER SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

RESEARCH AND
ENGINEERING

15 March 1983

Honorable Donald E. Sowle
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

Dear Mr. Sowle:

As was indicated during last month's meeting of the Executive Committee for Federal Procurement Reform, circumstances have become apparent that necessitate a revision to the FAR implementation milestones as shown in the Memorandum of Agreement of 2 August 1983.

These rather optimistic dates were adopted in a spirit of cooperation with the Office of Federal Procurement Policy and because of our strong desire to provide motivation and incentives to all Federal Agencies engaged in the FAR implementation process.

However, experience has shown that several factors were not considered in the establishment of these milestones and that others require revision. For example: the extent of effort and time required for the Executive Review effort could not be accurately estimated prior to the receipt of a significant number of the Phase II products; time was not provided for distribution of the FAR subsequent to publication; and experience gained in printing the initial FAR product revealed that original estimates of the time required were significantly understated.

As a result, the milestones for implementation of the FAR are revised as follows:

- Delivery of the final Phase II FAR product to the DAR and CAA Councils by 31 March 1983.

- Completion of the Executive Review effort by 1 July 1983.

- Publication of the FAR in the Federal Register by 30 September 1983.

- Completion of the FAR printing effort by 31 October 1983.

- Completion of the distribution of the FAR (50,000+ copies) by mid-December 1983.

- Implementation of the FAR on 1 April 1984.

The period of time between distribution and implementation is required for the accomplishment of necessary activities, including the training of both Government and industry personnel, loading of clauses and other data into automated acquisition systems, and printing of clause packages. Such efforts are prerequisites to the FAR being a viable acquisition system.

It should be understood, however, that there are several factors which bear upon the attainment of these new milestones. Among these are: the relaxation of requirements that are being imposed on agency supplements to the FAR under the Paperwork Reduction Act and the necessity for completion of outstanding FAR parts such as those dealing with ADP and Patents.

DoD GSA NASA

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Collections of Information in Federal Acquisition Regulations

AGENCY: Office of Management and Budget, Office of Information and Regulatory Affairs

ACTION: Notice concerning collections of information in Federal Acquisition Regulations

SUMMARY: This notice is being issued to inform all affected parties of our intent to review collections of information contained in the Federal Acquisition Regulation and agencies' implementing and supplementing regulations, under the Paperwork Reduction Act of 1980, prior to the April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Edward C. Springer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503; telephone (202) 395-4814.

Sincerely,

Christopher DeMuth
Administrator for Information
and Regulatory Affairs

Attachment

The Paperwork Reduction Act of 1980 (P.L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget before collecting information from ten or more members of the public. As evidence of such approval, agencies are required to display an OMB control number on collection of information requirements. As stated in P.L. 96-511, "Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director of OMB , or fails to state that such request is not subject to this chapter."

Collections of information from ten or more firms in connection with the acquisition of goods and services by the Federal Government are subject to the same review and approval requirements as other collections of information under P.L. 96-511. Furthermore, private sector firms, as "persons" within the meaning in the Act, are accorded protections in the Act. The Office of Information and Regulatory Affairs recently issued a rule (5 CFR Part 1320) 48 F.R. 13666 which clarifies the applicability of P.L. 96-511 to collections of information associated with Federal acquisitions.

Over the last few years, OMB has been working with the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration in developing a single, standard Federal Acquisition Regulation (FAR). That regulation is intended to replace and simplify the myriad of agency procurement regulations currently in place. It will contain numerous reporting and recordkeeping requirements, which OMB is planning to review under P.L. 96-511 prior to the April 1, 1984 implementation date for the FAR.

In addition to the FAR, some agencies will be issuing new acquisition procedures or retaining existing acquisition procedures applicable to particular agency requirements. The reporting and recordkeeping associated with such procedures will also be reviewed by OMB under P.L. 96-511 in time for the April 1, 1984 implementation of the FAR.

It is the purpose of this notice to inform all affected parties that for acquisitions for which solicitations are issued on or after April 1, 1984, only those collections of information required by acquisition regulations, bearing a current OMB control number displayed in the text of the Federal Acquisition Regulation or agency implementing and supplementing acquisition regulations, will be considered to be approved under the Paperwork Reduction Act. There will be continuing approval for solicitations issued prior to April 1, 1984 and contracts entered into as a result of solicitations issued prior to April 1, 1984.

Christopher DeMuth
Administrator for Information
and Regulatory Affairs

THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

7 FEB 1983

Honorable Edwin Meese III
Counsellor to the President
The White House
Washington, D.C. 20500

23887

Dear Mr. Meese:

As you know, DoD recently commented on a legislative proposal written by OMB to enhance the role of their Office of Federal Procurement Policy and to continue its existence for an additional period of time.

Certain aspects of this proposal just do not seem to be in line with how I believe government agencies should be organized or operated. First of all, I do not believe that the Executive Branch should propose the continuation of a legislative authorization of this function when this can be accomplished by the executive authority of the President. Second, the proposed legislation requires the Office of Federal Procurement Policy to report policy matters directly to the Government Operations Committees of Congress. I do not believe that we should support this direct reporting requirement.

I am not suggesting that an organization such as the Office of Federal Procurement Policy is not required, just that it should owe its existence and report to the President rather than the Government Operations Committees of Congress.

I agree that a central office should exist within the government to provide broad policy guidance on procurement matters. However, I am also aware that it is almost impossible to draw a distinct line between the role of such an office and the roles of agencies with contracting responsibility, and that, as a result, disagreements will occur from time to time. These should be resolved within the Executive Branch. When the office is a creation of the Congress, there could be a tendency for congressional committees to weigh in on these matters.

These issues are of great concern to me and I feel that you should consider not submitting this legislation.

Sincerely,

Paul Thayer

Paul Thayer

cc:
Hon. Stockman, OMB
Hon. Clark, NSC

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United States Senate
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SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, D.C. 20510

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SUSAN M. COLLINS, STAFF DIRECTOR

May 9, 1983

The Honorable Joseph R. Wright, Jr.
Deputy Director
Office of Management and Budget
Room 252, Old Executive Office Building
17th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20520

Dear Mr. Wright:

I appreciate the assistance which your staff has provided the Governmental Affairs Oversight of Government Management Subcommittee in its consideration of the Office of Federal Procurement Policy reauthorization. Your statement and Mr. Sowle's testimony before the Oversight Subcommittee on March 27 were extremely helpful.

In preparation for our mark-up later this month of S. 1001, a bill which I introduced with Senator Roth to reauthorize the OFPP for an additional five years, there are two issues on which I would like to obtain your judgment.

The first issue involves the codification of the agency management responsibilities prescribed in the first section of Executive Order 12352 on Federal Procurement Reform. You testified that since agencies were making progress in implementing the Order, no purpose would be served in repeating the same listing of responsibilities in law. The House Government Operations Committee, however, not only included agancy management responsibilities in section 8(a) of its bill (H.R. 2293), but also incorporated more specific directives in mark-up which require agencies to increase the use of effective competition. What is your opinion of the House provisions? Would you support a more abbreviated section on agency management responsibilities? If so, what language would you suggest?

The second issue concerns the transfer of the Federal Acquisition Institute from the OFPP to the General Services Administration. You testified that the public interest would be better served if the FAI, which has the responsibility to promote and coordinate programs of research, education, training, and career development, were assigned to a line agency such as GSA rather than to a staff agency like OMB. Is there further rationale for transferring FAI?

I would appreciate your providing me this information as soon as possible. If you have any questions, please contact Jeff Minsky or Susan Collins of my staff at 224-5538.

Please direct your response to the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, SD-326, Washington, D.C. 20510.

Thank you for your cooperation.

With best wishes, I am

Sincerely,

Bill Cohen

William S. Cohen
Chairman

WSC:jam

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 20 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

MAY 24 '83

Dear Mr. Chairman:

In your letter of May 9, 1983, you requested our comments on two issues relating to S. 1001, a bill which would reauthorize the Office of Federal Procurement Policy for a period of five years.

The first issue you raised relates to including, in proposed OFPP reauthorization legislation, the agency management responsibilities prescribed in Section 1 of Executive Order 12352. You noted that section 8(a) of H.R. 2293, as originally introduced, contained a general restatement of the agency responsibilities in section 1 of Executive Order 12352. At the markup of the bill by the House Government Operations Committee, additional detailed management responsibilities, including some relating to competition, were included in section 8(a). You asked our opinion of those provisions.

Procurement is a dynamic process which, by its nature, requires continuing improvement. By the same token, the improvement or reform process itself takes place in an ever changing environment. One of the advantages of an Executive Order is the flexibility it gives to management in the reform process. We do not believe that the detailed management aspects of a reform program should be legislated. Therefore, we oppose including detailed agency management responsibilities in the OFPP reauthorization legislation.

You asked, also, whether OMB would support a more abbreviated section on agency management responsibilities than is contained in the House bill. We are concerned that any such legislation may eventually inhibit, rather than promote, reform by limiting or removing management flexibility in this dynamic area. However, if the Committee believes that some statement of broad principles for continuing procurement reform is needed in the legislation, we have suggested a provision (Enclosure 1) which would be acceptable.

The second issue concerns transfer of the Federal Acquisition Institute from OFPP to the General Services Administration. FAI should be transferred for the following reasons: The transfer would make the Institute even more responsive to the operational concerns of the agencies in the work force development and procurement research areas. Also, it would bring the operational mode of the FAI into line with the mode traditionally used by OFPP (i.e., a small, highly competent staff of seasoned procurement experts leading and overseeing the policy development work of executive agents or interagency committees).

Based on OFPP's past experience with programs of this kind, the transfer of FAI to GSA will not result in diminution of either the importance of the FAI's mission or its ability to perform that mission. (Language transferring the FAI to GSA is found in Enclosure 2.)

Please let me know if you have any questions or if I can be of further assistance.

Sincerely,

Joseph R. Wright, Jr.
Deputy Director

2 Enclosures

Enclosure 1

FEDERAL AGENCY RESPONSIBILITIES

SEC. ___. (a) To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with all laws, Government-wide policies and regulations, and good business practices --

(1) designate a procurement executive who shall be responsible for management direction of the procurement system, including agency unique policies and regulations and agency system standards, and who shall serve as the advocate for competition; and

(2) establish clear lines of authority, accountability, and responsibility for procurement decision making, including placing the procurement function at a sufficiently high level in the agency to provide --

(A) direct access to the head of the major organizational element served; and

(B) comparative equality with organizational counterparts;

(3) develop and maintain a procurement management career program to ensure an adequate professional work force; and

(4) increase the use of effective competition in agency procurement.

Enclosure 2

TITLE ___

SEC. ___ PURPOSE

The Federal Acquisition Institute is transferred to the General Services Administration, effective October 1, 1983.

SEC. ___ FUNCTIONS

(a) The Federal Acquisition Institute shall:

(1) Foster and promote Government-wide career management programs for the improvement of the procurement work force; and

(2) Promote and coordinate Government-wide research to improve the procurement process and procurement related laws, policies, methods, regulations, procedures and forms.

(b) The functions performed under this Title shall be carried out pursuant to the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377).

SEC. ___

The Director of the Office of Management and Budget shall transfer such personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available or to be made available in connection with the functions transferred to the General Services Administration, as he determines are necessary to carry out the purposes of Section ____.

WILLIAM V. ROTH, JR., DEL., CHAIRMAN

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United States Senate
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OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, D.C. 20510

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SUSAN M. COLLINS, STAFF DIRECTOR

May 23, 1983

The Honorable Donald E. Sowle
Administrator for Federal Procurement Policy
Office of Federal Procurement Policy
Room 9001
New Executive Office Building
726 Jackson Place, N.W.
Washington, D.C. 20503

Dear Mr. Sowle:

The Office of Federal Procurement Policy has been very helpful in assisting the Oversight of Government Management Subcommittee with its procurement reform efforts.

In addition to the many issues discussed at the OFPP reauthorization hearing, the Oversight Subcommittee is interested in the General Accounting Office bid protest process. The OFPP was recently involved in an effort to draft a policy letter which prescribed new procedures for resolving bid protests. Would you provide the Subcommittee with any information pertaining to the status of and future plans for this bid protest policy letter?

The Oversight Subcommittee is also interested in what other activities are on the OFPP's agenda. You stated at the hearing that the OFPP would be submitting an activity report to the Congress which covered the projects completed and now underway, as well as your short- and long-range plans for the future. Please provide a copy of this "Activities of the Office of Federal Procurement Policy" report for the record.

I would appreciate your providing this information as soon as possible. If you have any questions, please contact Jeff Minsky or Susan Collins of my staff at 224-5538.

Please direct your response to the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, SD-326, Washington, D.C. 20510.

Thank you for your cooperation.

With best wishes, I am

Sincerely,

Bill Cohen
William S. Cohen
Chairman

Carl Levin
Carl Levin
Ranking Minority Member

WSC:CL:jam

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
SD-326
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in reply to your letter dated May 23, 1983, concerning the OFPP's draft policy letter prescribing new procedures for resolving bid protests. The letter also requested a copy of the Report to the Congress on the Activities of the Office of Federal Procurement Policy. We are pleased to forward a copy of the report (Enclosure 1) for inclusion in the record.

On the matter of prescribing new procedures for processing bid protests, OFPP proposed Policy Letter 81-4 (Enclosure 2) dated July 17, 1981, was published for comment in the Federal Register on July 22, 1981. The proposed policy, in addition to recognizing the role of the General Accounting Office as a forum for resolving bid protests, set forth guidance for a more formalized agency bid protest procedure. This agency procedure included appointment of a "designated official" to decide protests and a statement in each invitation for bid advising contractors of the policy and procedure concerning the filing of bid protests.

Comments from the Government and the private sector ranged from recommendation for a fully judicialized procedure to retention of the existing regulatory procedures.

In light of the comments received, the task group reexamined the need for new bid protest procedures. Some of the major procuring agencies had questioned the need for additional policy directives in the bid protest area and stated that the coverage of the Federal Procurement Regulations and the Defense Acquisition Regulation was adequate. This coverage will be reflected in the new Federal Acquisition Regulation (FAR) The FAR, with its uniform coverage applicable to all Federal agencies, appeared to the task force to provide a reasonable balance between the interest of the Government and the contractor community.

A synoposis of the FAR coverage which will become effective on April 1, 1984, is provided for the Subcommittee's information (Enclosure 3). There is no further action proposed to be undertaken at this time.

We would be pleased to provide any additional information that the Subcommittee may desire.

Sincerely,

Don Sowle

Donald E. Sowle
Administrator

Enclosures

cc: Honorable Carl Levin

Report to the Congress:

ACTIVITIES OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

October 1980 - December 1982

Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President

CHAPTER I:

INTRODUCTION

This report describes the activities of the Office of Federal Procurement Policy (OFPP) from October 1, 1980 through December 31, 1982. It is the fifth report on OFPP activities since the office was created in 1974. Future reports will be prepared annually and submitted to the Congress shortly after the end of each calendar year.

During the period covered by this report, many significant objectives have been met. A comprehensive proposal for a Uniform Federal Procurement System (UFPS) was developed and submitted to the Congress. Executive Order 12352 on Federal Procurement Reforms, which implements many of the administrative reforms called for in the UFPS proposal, was drafted and subsequently issued by the President. Because of their significance, the principal procurement reforms enunciated in the Uniform Federal Procurement System proposal and Executive Order 12352 have been incorporated into this Administration's comprehensive management improvement program, known as Reform '88.

Although this comprehensive reform program - as reflected in the UFPS and Executive Order 12352 - was the principal focus of OFPP's attention and resources during this period, the ongoing policy and program responsibilities of the office were not neglected. Major policies were developed or revised in such areas as patents, Government-wide debarment and suspension, use of industry product and service standards, and consulting services. (A listing of OFPP's procurement policy issuances is provided at Appendix B.) With the active involvement of the major procurement agencies, a long-standing procurement regulatory reform effort was brought to fruition in the form of initial publication of the Federal Acquisition Regulation for final review and implementation planning. The details of these and the office's other major activities are provided in Chapters IV and V of this report.

CHAPTER II:

MISSION, FUNCTIONS AND AUTHORITIES

Mission

Direct procurement expenditures by Federal agencies continue to account for about one-fifth of the total Federal budget, and the procurement process involves over 130,000 Federal employees. In FY 1982, Federal Government contracting amounted to $159 billion and consisted of approximately 19 million contracting actions.

Because of the magnitude and budgetary significance of the procurement function and the void in policy leadership to oversee and direct it, the Commission on Government Procurement, in its 1972 report to the Congress, recommended the establishment of the Office of Federal Procurement Policy (OFPP). Two years later, Public Law 93-400, "The Office of Federal Procurement Policy Act," was enacted. It established the OFPP in the Office of Management and Budget (OMB) to provide overall direction of procurement policy and to prescribe procurement policies, regulations, procedures and forms for executive agencies, and to coordinate programs to improve the quality and performance of procurement personnel. The office was authorized for a period of five years with the fundamental objective of improving the economy, efficiency and effectiveness of the procurement of property and services by executive agencies.

In 1979, the office was reauthorized by the Congress for four additional years, with the enactment of Public Law 96-83, "The Office of Federal Procurement Policy Act Amendments of 1979." The Act confirmed the fundamental mission of the office, but withdrew OFPP's authority to issue procurement regulations -- in favor of relying on the procurement regulatory agencies (the Department of Defense, General Services Administration and National Aeronautics and Space Administration) to perform that function. More importantly, the Act established, as OFPP's major immediate priority, the development of a comprehensive proposal for a "Uniform Procurement System," and provided a schedule for that purpose. That proposal was provided to the Congress in February 1982, and is discussed in Chapter IV of this Report.

OFPP's current authorization is scheduled to expire in September 1983, and legislation is required to reauthorize the office for an additional period of time. Such a reauthorization will continue the responsibility of the office to provide policy leadership and direction in implementing the Uniform Federal Procurement System.

Functions

The principal functions assigned to the office by statute are to:

- Develop and implement a uniform procurement system, including a central management system;

- Review the recommendations of the Commission on Government Procurement and propose priorities and schedules for completing the remaining recommendations;
- Develop a system of simplified and uniform procurement policies, regulations, procedures and forms;
- Establish criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures and forms;
- Promote and conduct research in procurement policies, regulations, procedures and forms, through the Federal Acquisition Institute;
- Establish a computer-based information system for collecting, developing, and disseminating procurement data;
- Recommend and promote, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development and performance evaluation of procurement personnel;
- Develop, for inclusion in the uniform procurement system, standard contracts and contract language in order to reduce the Government's cost of procuring goods and services as well as the private sector's cost of doing business with the Government; and
- Provide leadership and coordination in the formulation of executive branch positions on legislation relating to procurement.

Authorities

The principal authorities of the Administrator for Federal Procurement Policy, as assigned by Public Law 93-400, as amended, are to:

- Issue procurement policy directives, with the concurrence of the Director of OMB;
- Designate executive agents and establish interagency committees to develop new or revised policies;
- Require agencies to issue regulations implementing OFPP policy directives; and
- Deny or rescind promulgation of any agency rule or regulation inconsistent with OFPP policy directives.

CHAPTER III:

ORGANIZATION, OPERATIONS AND BUDGET

Organization

OFPP is composed of five major units: Office of the Administrator, Procurement Law and Legislation Division, Policy Development Division, Management Controls Division and the Federal Acquisition Institute. Each of the divisions is headed by an Associate Administrator, while the Federal Acquisition Institute is headed by a Director. An organization chart showing each of the components of OFPP is provided at Figure 1.

The staffing and principal responsibilities of the five major organizational units are summarized, as follows:

- **Office of the Administrator.** This element consists of four positions: the Administrator, the Principal Associate Administrator and two support positions. It is responsible for the overall direction and coordination of the work of the OFPP.

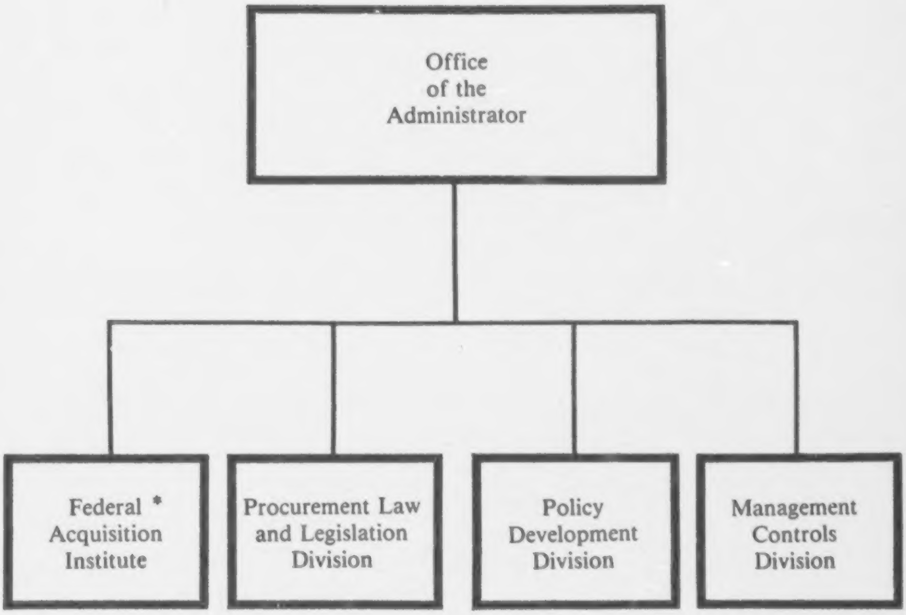
- **Procurement Law and Legislation Division.** This unit consists of four positions and is responsible for advising the Administrator on legislative developments in the Congress and on legislation proposed by the executive agencies. It is also responsible for liaison with Congressional members and staff (in coordination with OMB's Legislative Affairs Division) and for compiling and maintaining a compendium of pending procurement-related legislation.

- **Policy Development Division.** Consisting of sixteen positions, this division is responsible for coordinated development of Government-wide policies for the entire Federal procurement process. The division provides the principal staff support to the Administrator in carrying out assigned responsibilities for providing policy leadership and direction to all executive branch departments in order to promote economy, efficiency and effectiveness in the procurement of property and services.

- **Management Controls Division.** Although not yet fully staffed, the unit is proposed to consist of four positions. It is responsible for (1) the overall planning, management and evaluation of the work of the office, (2) development and implementation of procurement management and logistics policies, (3) the conduct of the office's public and private sector liaison programs, and (4) internal administrative functions, including personnel management and budgeting.

- **Federal Acquisition Institute.** The FAI has a staff of 16 and is responsible for planning and developing programs to improve the quality, performance, effectiveness and productivity of the Government's procurement work force, and for promoting and conducting research in procurement policies, regulations, procedures and forms.

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY


Office of the Administrator
Federal * Acquisition Institute
Procurement Law and Legislation Division
Policy Development Division
Management Controls Division

*Pending transfer to the General Services Administration

Figure 1

With regard to the Federal Acquisition Institute, the Administration intends to seek legislation to transfer the Institute from OFPP to the General Services Administration. The transfer is intended to make the Institute even more responsive to the operational concerns of the agencies and bring it into conformance with the operational mode traditionally employed by OFPP (i.e. one staff member overseeing and leading the development work of an executive agent or interagency committee.) OFPP will continue to be responsible for overseeing and supporting the continuing career development of the procurement work force.

Operations

Currently, 41 staff positions are assigned to OFPP (including the FAI). This complies with the Congressional wish that the office consist of "... a small, highly qualified and competent staff." The magnitude of the office's mission responsibilities, coupled with the limitation in staff resources, has dictated the principal operating mode of the office; namely, to work through executive agents or interagency committees in fulfilling policy and program responsibilities. OFPP professional staff members serve as program managers for project assignments, directing and overseeing interagency groups of experts. The OFPP staff is also supplemented, from time-to-time, by policy experts detailed from the executive agencies to direct or oversee specific policy programs. The benefits of this mode of operation are that (1) OFPP focuses on Government-wide policy matters in lieu of agency-unique policies and procedural details, (2) current field experience is available in the early policy formulation stage, and (3) agencies are aware of, and involved in, OFPP's policy development efforts.

Agency involvement in the policy process is also facilitated by (1) OFPP's visitation program in which the Administrator and senior members of the staff periodically meet with individual agency procurement officials to discuss agency procurement problems and policy needs, (2) quarterly status reports on policy initiatives, and (3) frequent sessions with the Federal Procurement Council, which consists of the procurement representatives of 24 agencies.

Budget

In performing its mission during the period covered by this report (i.e. FY 1981-1982), the Office of Federal Procurement Policy spent an average of $2.5 million annually. Expenditures for FY 1983 are estimated also to be in the $2.5 million range, while those for FY 1984 are expected to total $2.7 million. OFPP budget expenditures for each of the fiscal years since it was established, along with assigned staff, are depicted in Figure 2 below.

Figure 2: OFPP Budget and Staff Resources

	FY 75	76	77	78	79	80	81	82	83	84
Expenditures (In Thousands of Dollars)	181	871	1449	1594	2654	2882	2578	2425	2495	2714
Staff (Full Time, Permanent)	4	20	27	28	45	45	42	41	41	41

(Note: The Federal Acquisition Institute was transferred from the Department of Defense to become an integral part of OFPP at the start of FY 1979.)

Actual FY 1982 expenditures, as well as budget estimates for FY 1983 and 1984, are allocated as shown in Figure 3 below:

Figure 3: Budgeted Salaries and Expenditures (In Thousands of Dollars)

	FY 1982 Actual	FY 1983 Estimate	FY 1984 Estimate
Personnel Compensation	1,717	1,875	1,898
Personnel Benefits	150	164	182
Travel	21	44	32
Standard Level User Charges	284	191	381
Rent and Utilities	55	48	60
Printing	61	39	22
Other Services	130	115	120
Supplies and Materials	7	15	14
Equipment	0	4	5
Totals:	2,425	2,495	2,714

(Note: These accounts include salaries and expenditures of the Federal Acquisition Institute.)

CHAPTER IV:

MAJOR PROGRAMS

This chapter summarizes the accomplishments and status of the major programs initiated or continued during the reporting period. These programs include the development and submission to the Congress of the Uniform Federal Procurement System proposal, issuance and implementation of Executive Order 12352 on Federal Procurement Reforms, further development of the Federal Acquisition Regulation, establishment of new initiatives to improve the work force, refinement of policies for reliance on the private sector and processing the recommendations of the Commission on Government Procurement.

A. Uniform Federal Procurement System. Public Law 96-83, which amended Public Law 93-400 in 1979 to reauthorize OFPP for an additional four years, directed OFPP to submit to the Congress, within one year, a proposal for a uniform procurement system, and, within two years, a proposal for a central management system and any necessary legislative changes relating to the two proposed systems. A proposal for a Uniform Procurement System was submitted to Congress in October 1980, as the first part of a planned two-phased effort. The management system and legislative proposals were to be submitted by October 1981. However, it became apparent that the close relationships among the three parts -- procurement system, management system and legislative proposals -- necessitated concurrent development. Accordingly, the October 1980 submission was superseded by a new integrated proposal for a Uniform Federal Procurement System (UFPS), which was submitted to Congress on February 26, 1982.

The UFPS proposal was developed around four basic themes:

- Uniform Government-wide policy and improved management, with provisions for decentralized operations and flexibility to meet unique agency requirements.
- A simplified system that is responsive and provides timely results.
- Effective competition with latitude for innovation.
- Procurement professionalism, with emphasis on initiative, judgment, responsibility and accountability.

The proposal constitutes a blueprint for procurement reform and calls for numerous improvements in the procurement process. Some of the improvements will require legislative changes, and suggested legislation was included in the proposal. Other improvements can be made administratively, and these were directed by the Executive Order.

The preparation of this proposal involved the bulk of OFPP's resources during calendar years 1981 and 1982. Since the submission of the proposal, OFPP's primary emphasis has been on achieving the improvements envisioned in the proposal, both through support of proposed legislation and through implementation of Executive Order 12352.

B. **Executive Order 12352 on Federal Procurement Reforms.** The proposed Uniform Federal Procurement System called for numerous improvements in the Federal procurement process, many of which could be implemented administratively. Executive Order 12352 on Federal Procurement Reforms was issued by President Reagan on March 17, 1982, to address administrative improvements. (See Appendix A) In the Executive Order, the President directed agencies to accomplish those procurement reforms that can be carried out administratively, without waiting for Congressional action to change statutes.

The Executive Order requires the heads of agencies, under the leadership of the Office of Management and Budget (OMB), to make fundamental reforms in Federal procurement to ensure the efficient expenditure of public funds. It specifically requires that: (1) the head of each agency appoint a Procurement Executive to manage the agency's procurement function; (2) agencies initiate procurement reforms; and (3) OMB's Office of Federal Procurement Policy work with the agencies to provide policy guidance and leadership and report progress to the President. It requires, in addition, that "... the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration ... continue their joint efforts to consolidate their common procurement regulations into a single simplified Federal Acquisition Regulation (FAR) by the end of calendar year 1982." It also requires the Director of the Office of Personnel Management, in consultation with agency heads, to ensure that personnel policies and standards meet agencies' needs for a professional procurement work force.

OFPP, in coordination with the major procurement agencies, formed six interagency task groups to develop specific recommendations, guidance and supplementary materials as a blueprint for agencies to follow in achieving the objectives of the Executive Order. As a result, agencies will be able to implement reforms with a minimal additional investment of time and resources. The task groups, whose efforts are expected to continue until late 1983, are focusing on the following mandates:

- Develop a model charter for Procurement Executives. (This task group has completed its work, and a model charter was furnished to all agencies for guidance in July 1982.)
- Establish clear lines of contracting authority and accountability.
- Improve procurement system performance (includes establishing criteria for enhancing competition and for evaluating system performance).
- Reduce administrative costs and burdens.
- Simplify small purchases.
- Establish career management programs that will result in a highly qualified, well managed professional procurement work force.

Each of the five active task groups has a charter, a work plan with milestones, and a chairman who is either a member of the Senior Executive Service or a general or flag officer in one of the military services. Their progress to date indicates that the task group efforts will result in numerous specific actions that the agencies can take to improve the effectiveness and efficiency of their procurement operations.

Because the task groups are laying the foundations for implementation, agencies are not expected to expend scarce resources duplicating the work at the agency level. Instead, agencies will assist the task groups and then build upon their products. Forty-five agencies, moreover, have already designated Procurement Executives and are establishing them and their roles as integral parts of the agency organization and operation -- a major step in assuring that meaningful reforms will, in fact, take place.

OFPP is leading and coordinating this total implementation effort through the Executive Committee on Federal Procurement Reforms, which is made up of the eight largest procuring agencies plus the Small Business Administration and the Office of Personnel Management. The Committee is chaired by the Administrator for Federal Procurement Policy. OFPP also has at least one staff member serving on each of the interagency task groups.

C. Federal Acquisition Regulation (FAR). Public Law 93-400, as amended, requires that the Administrator develop a system of simplified and uniform procurement policies, regulations, procedures and forms. The FAR will: (1) consolidate Government-wide procurement regulations into a single, simplified, and understandable regulation; (2) reduce the proliferation of regulations among and within agencies; and (3) make it easier to do business with the Government, particularly for small and minority firms. The consolidation of the three primary regulations (Defense Acquisition Regulation, Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation) into the FAR will result in a 62% reduction in the volume of primary regulations and is expected to eliminate 50% of secondary and lower level regulations.

The Office of Federal Procurement Policy initiated the FAR project in January 1978 and has provided policy oversight and assistance throughout its development. The Department of Defense, General Services Administration and National Aeronautics and Space Administration (the three agencies with statutory regulatory authority for procurement) have provided most of the resources for FAR development and will issue it jointly under their respective statutory authorities. The FAR will be maintained jointly by DOD (through its Defense Acquisition Regulation Council) and the civilian agencies (through the Civilian Agency Acquisition Council chaired by GSA).

The FAR is in the final stages of development. A copy of the FAR was printed in December 1982 and has been distributed to the agencies for final review and implementation planning. Simultaneous with this review, industry and agency comments are being resolved by the FAR Project Office staff. The three agencies with regulatory authority have signed a Memorandum of Agreement (MOA), dated

August 2, 1982, covering the completion, implementation and maintenance of the FAR. The memorandum completion schedule calls for the final regulation to be published on July 1, 1983, to become effective on October 1, 1983.

DOD, GSA, and NASA signed a joint letter on March 15, 1983, again extending the effective date of the FAR; this time to April 1, 1984 - a 6-month extension. The three agencies presented the following schedule to achieve that date:

April 25, 1983	Complete Phase II
July 1, 1983	Complete Executive Review
September 30, 1983	Publish FAR in Federal Register
October 31, 1983	Complete printing
December 15, 1983	Complete distribution
April 1, 1984	Implement FAR

On April 14, 1983, officials of the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), and OFPP met with the three procurement regulatory agencies for the purpose of discussing the FAR schedule and means of assuring that no further slippages would occur in its implementation. As a result of that meeting, OIRA published a notice in the Federal Register which makes the April 1, 1984, effective date for the FAR mandatory under P.L. 96-511. The FAR will be published as Chapter 1 of Title 48 of the Code of Federal Regulations (CFR). The FAR system provides that agency implementing regulations must not conflict with, restate, or paraphrase the FAR, must conform to its numbering system, and must also be published in Title 48 of the CFR. Since the purpose of the FAR system is to reduce redundancy and regulatory proliferation, these restrictions also apply to lower level regulations within agencies. Three additional measures of control will assure that implementing regulations will not proliferate. They are: (a) internal agency management reviews, audit, I.G., etc.; (b) OIRA's regulatory review under P.L. 96-511, the Paperwork Reduction Act; and (c) public review and comment on proposed revisions, as well as on agency supplementing or implementing regulations.

D. Personnel Classification and Qualification Standards (GS-1102 Series).

Classification standards determine the title and grade of procurement positions. Qualification standards determine the skills, knowledge and other criteria that persons must meet in order to be eligible for selection and promotion. In its 1972 report to the Congress, the Commission on Government Procurement recognized the importance of these standards to work force professionalism and specifically recommended that the 1969 standards be revised. The revisions were necessary to more accurately reflect the evolving authority and responsibility vested in procurement personnel and to support the Government's efforts to develop, attract and retain a competent work force.

Since 1979, the Federal Acquisition Institute (FAI) and the executive agencies have worked with the Office of Personnel Management, which is responsible for issuing and maintaining these standards, to develop new classification and qualification standards for Contract and Procurement Specialists (GS-1102 series). Various draft standards have been developed during the past three years. In consonance with Section 3 of Executive Order 12352, which calls upon OPM to ensure that personnel policies and classification standards meet executive agency needs for a professional procurement work force, the standards are being refined by OPM and are nearing completion. Throughout this development effort, the FAI played a vital role in coordinating and supporting interagency participation.

Once the standards are issued, the FAI will assist agencies, through orientation sessions and other means, to apply the standards consistently and properly and to take best advantage of the various options implicit in them for recruiting, developing and promoting employees.

E. Government Reliance on the Private Sector. OMB Circular No. A-76 states the Government's policy of relying on the private sector for goods and services when contracting with the private sector is more economical. The Circular's Cost Comparison Handbook, published along with the Circular in March 1979, prescribes a formal means for determining the most economical method of operation, either by contract or by using in-house Government personnel.

During the period from March 1979 to February 1981, OFPP monitored agencies' progress in implementing the Circular. Progress was not as rapid as originally expected. Accordingly, in April 1981, OMB Bulletin 81-15 was issued, along with a memorandum to agency heads from the OMB Deputy Director directing that they aggressively implement the Circular without delay. Information received from the agencies indicates that full implementation of the Circular by fiscal year 1986 would result in savings exceeding $5 billion. Annual savings of $1 billion would continue to accrue after FY 1986.

During this period, some inequities as well as cumbersome procedures were identified in the Cost Comparison Handbook. Consequently, in February 1982, an interagency task group of major agencies, established and chaired by OFPP, began a reexamination of the cost comparison procedure and the Circular, itself, in order to streamline them and make them as efficient as possible. The task group developed a greatly simplified cost comparison procedure which, on the basis of field tests, is estimated to reduce the time to conduct a cost comparison by 50 percent. Other unnecessary and burdensome procedures are to be eliminated. Recently, the proposed revisions to OMB Circular No. A-76 and its Cost Comparison Handbook were published for a 60-day comment period. The new procedures have been well received by those agencies who have reviewed the draft procedures to date. OFPP will continue to coordinate and consult with the agencies to ensure that their A-76 programs are on course.

F. Recommendations of the Commission on Government Procurement (COGP). Since its inception, one of OFPP's primary areas of responsibility has been the review and proper disposition of the 149 recommendations made by the Commission on Government Procurement, which cover a wide range of procurement issues and topics. OFPP's responsibility for the COGP recommendations was reaffirmed in the enactment of Public Law 96-83. Sections 4(c) and 5(a) of Public Law 96-83 require that the Administrator review the COGP recommendations and report to Congress on those that should be completed, amended or rejected, and to propose the priority and schedule for completing the remaining recommendations.

OFPP reported to Congress in October 1980 on the status of the 149 COGP recommendations. At that time:

38 of the recommendations had been completed;

93 were in process of being implemented, and

18 had been rejected.

Since the October 1980 report, OFPP has continued to review and work toward the implementation of the unresolved recommendations. Actions on an additional 44 recommendations were completed during this period; i.e., all actions that can be taken by OFPP on the recommendations have been taken. Of these 44 recommendations:

24 were completed

12 are included in the Federal Acquisition Regulation

8 are included in the proposal for the Uniform Federal Procurement System.

Of the 49 recommendations remaining to be completed:

35 are scheduled for completion by June 1984

14 will require legislation.

Figure 4: Summary Status of COGP Recommendations

Procurement Topic	Total Recommendations	Number Completed	Number In Process	Number Rejected
General Procurement	49	33	11	5
Acquisition of Research and Development	12	8	3	1
Acquisition of Major Systems	12	12	-	-
Acquisition of Commercial Products	19	12	3	4
Acquisition of Construction and Architect and Engineer Services	4	-	3	1
Federal Grant and Assistance Programs	2	2	-	-
Legal and Administrative Remedies	24	11	10	3
Government Property and Catastrophic Accidents	5	2	3	-
Technical Data and Copyrights	16	0	16	-
Other Statutory Considerations	6	2	-	4
Totals	149	82	49	18

CHAPTER V:

OTHER POLICY INITIATIVES

In addition to the major programs summarized in Chapter IV, OFPP is involved in developing and improving procurement policies in many other specific areas, as indicated by the variety of policy issuances listed at Appendix B. These policy responsibilities were assigned in Public Law 93-400, Public Law 96-83 or in other laws and directives. Important developments in these areas during the period covered by this report are as follows:

A. Federal Procurement Data System (FPDS). One of OFPP's statutory responsibilities is to establish a computer-based information system for collecting, developing and disseminating procurement data. The FPDS was developed in coordination with an interagency FPDS Advisory Board and activated at the beginning of FY 1979. The Federal Procurement Data Center, which is operated by the General Services Administration, now produces a variety of quarterly, annual and special reports covering all of Federal procurement. OFPP continues to chair the FPDS Advisory Board and to work with the Federal Procurement Data Center to refine and improve the system for collecting and displaying procurement statistics. Two items were added to the reporting system during the last two years to cover requirements for the International Agreement on Government Procurement and Public Law 95-507 (Small and Small Disadvantaged Business subcontracting program).

B. Profit/Fee Negotiation. OFPP Policy Letter 80-7, issued on December 9, 1980, required the use of a structured approach, such as weighted guidelines, for determining negotiated profit objectives. The policy letter also provided for the allowability of the imputed cost of facilities capital (Cost Accounting Standard 414) to encourage capital investment for productivity enhancement and attendant reductions in the cost of Government needs. (Operating capital needs are considered in negotiating profit objectives under the policy, but interest on such borrowings is not allowable.) OFPP will continue to monitor agency implementation of this policy and review the adequacy of profit or fee arrangements to assure that contractors are fairly compensated for their risk and capital investment.

C. Commercial Products Policy. Savings and cost avoidances of over $82 million were achieved during FY 1981 and 1982 through the implementation of OFPP's commercial products policy. Simply stated, this policy emphasizes Government use of commercial off-the-shelf products and commercial distribution channels instead of products acquired in accordance with detailed Federal specifications for distribution through the Government depot system. The commercial products policy is part of OFPP's efforts to simplify Federal procurement practices and to eliminate overlap and duplication in procurement operations. The FY 1981 and 1982 savings resulted primarily from: (1) the Department of Agriculture's assumption of Government-wide responsibility for food quality assurance; (2) the agreement by the Department of Defense and the Veterans Administration to cooperate in the procurement of certain drugs and medical devices; and (3) various actions taken by the General Services Administration during FY 1982 in applying the commercial products policy to the purchase of furniture and the substitution of simplified commercial item descriptions for detailed Federal specifications.

D. Advance Procurement Planning/End-of-Year Spending. OFPP issued Policy Letter 81-1 requiring each agency to develop a management system for advance procurement planning, lead-time procedures, cut-off date procedures for procurement initiation, review procedures for last quarter spending and a contract action log. Agency procedures were received and reviewed by OFPP. An end-of-year spending alert letter was sent to all agencies in August 1982 with a comprehensive checklist to be used for detecting and preventing end-of-year procurement abuse.

E. Labor Surplus Areas. Executive Order 12073 gives OFPP the responsibility for "overall direction and oversight of the policies affecting procurement programs for labor surplus areas." This office continues to exercise this responsibility and coordinates its activities with the General Services Administration, through the Interagency Task Force on Labor Surplus Area Problems. OFPP also monitors the legislatively mandated "Defense Logistics Agency (DLA) exception" to the Maybank Amendment, under which the DLA is testing the allowability of a price differential for labor surplus area firms. (The Maybank Amendment is a provision of the Defense Appropriations Act that precludes the payment of a price differential on contracts to relieve economic dislocations.)

F. Debarment and Suspension. OFPP issued Policy Letter 82-1, "Government-wide Debarment, Suspension and Ineligibility," on June 24, 1982. The Policy Letter was published in the Federal Register on July 1, 1982, and became effective on August 30, 1982. The Policy Letter, which results from the work of an interagency task force, took into account more than 600 comments from over 70 Government and private sector sources. The Policy Letter sets forth, for the first time, Government-wide policies and procedures for administrative debarment and suspension of Government contractors and provides for a consolidated listing of administrative debarments and suspensions. (It also lists debarments and suspensions made pursuant to statutory authorities, executive orders, and other regulatory authorities, but does not set forth the policies and procedures for those actions.)

G. Bid Protests. In response to recommendations of the Commission on Government Procurement, Congressional interest, and a need for improved guidance to Federal agencies, OFPP sponsored an interagency task group to develop policy direction for agency processing of bid protests. Federal agencies and the General Accounting Office were represented on the task group. The task group's recommendations for improving bid protest procedures within the agencies were incorporated into the proposed OFPP Policy Letter 81-4, which was published in the Federal Register July 21, 1981, for a 60-day comment period. The proposed policy letter included such features as: (1) notice to bidders/offerors concerning bid protest procedures; (2) designation of an agency official at a level above the contracting officer to resolve protests within the agency; and (3) high level approval of determinations to award in the face of a protest. Comments were received from more than 40 organizations, agencies and individuals. A number of issues raised by several agencies and private commentors necessitated delaying final issuance of the policy letter. Coverage of bid protests, soon to be effective in the Federal Acquisition Regulation, is being analyzed, along with that recommended by the task group, prior to further action in this area.

H. Patents. Public Law 96-517, "The Patent and Trademark Amendments of 1980," gave non-profit organizations and small businesses, with limited exceptions, a first right of refusal to title in inventions they have devised in performance of Government grants and contracts for research and development. Under the Act, OFPP is responsible for the issuance of implementing regulations. On July 2, 1981, OMB Bulletin No. 81-22 was issued to provide interim regulations while agency and public comments were sought. Based on a review of approximately 140 comments, OMB Circular No. A-124 was issued on February 10, 1982, establishing permanent implementing regulations and a standard patent rights clause. To promote uniform Government-wide patent policy, the Office of Science and Technology Policy, working with OFPP, is coordinating a Presidential statement on patent policy which would extend the Public Law 96-517 policy to all firms doing business with the Government, to the extent permitted by law. Appropriate regulatory coverage will be included in the Federal Acquisition Regulation.

I. Prompt Payment. OFPP continued to explore ways to minimize payment delays under Government contracts, coordinating with procuring agencies, the Department of the Treasury, and the General Accounting Office. Emphasis was placed on simplicity and uniformity in procedures and forms, opting for the use of better management and administrative practices in lieu of proposing or supporting new legislative initiatives. These administrative efforts, however, were overtaken by the Prompt Payment Act (Public Law 97-177), signed on May 21, 1982. The Act was implemented by OMB Circular No. A-125 and by regulatory coverage in the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulations. OFPP worked with the Department of Defense and General Services Administration in coordinating the implementing regulations.

J. Use of Private Sector Standards. OFPP, working with OMB's Office of Information and Regulatory Affairs, undertook a comprehensive revision of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards." The revised circular was issued on October 26, 1982. The revision, which was issued in draft form for agency and public comment in early 1982, eliminates many costly and burdensome aspects of the original Circular (issued in January 1980) while continuing to encourage agency participation in the development of private sector standards and agency use of such standards for procurement and regulatory purposes. This Circular is an important adjunct to OFPP's commercial products policy, which is discussed in Item C, above.

K. Major Systems Acquisition Policy. OFPP continues to emphasize implementation of OMB Circular No. A-109, "Major System Acquisitions." Nearly all agencies have issued directives to implement this Circular. Although it appears that too much emphasis continues to be placed on the mechanics of the process and not enough on the basics of problem-solving logic, business principles and management principles, some progress has been made i. deemphasizing procedures. The Department of Defense has recently revised its directives to simplify and streamline the procedures while maintaining the thrust of the fundamental A-109 principles. Agencies other than the Department of Defense, National Aeronautics and Space and Administration and Department of Energy are now following A-109 principles on their high-dollar critical programs. Major system acquisition is addressed in a special section of the forthcoming Federal Acquisition Regulation which will help to further institutionalize A-109 principles in the Federal procurement process.

L. Grantee Procurement. OFPP reviewed many agencies' regulations controlling procurement under Federal assistance programs to assure conformance with OMB Circular No. A-102, Attachment O, Grantee Procurement Standards. Revisions to these regulations reduced Federal intrusion, paperwork and other burdens for grantees. Technical assistance was provided in the development of a "Procurement Desk Guide" to serve as an aid in State and local government grantee procurement. This effort will improve grantee procurement without Federal review and controls.

M. Fraud, Waste and Abuse. A handbook on the detection and prevention of fraud, waste and abuse in procurement was developed by OFPP in 1982. The material has been incorporated into training provided by the Federal Law Enforcement Training Center, the Interagency Audit Training Center and other agency activities that train auditors, investigators and law enforcement officials. A training package on procurement "standards of conduct," including audiovisual materials, was developed and provided to over 10,000 employees. The regulatory coverage of organizational conflict of interest and standards of conduct has been revised for inclusion in the Federal Acquisition Regulation.

N. Consulting Services. A draft revision to OMB Circular No. A-120 on consulting services was issued for public and agency comment in January 1982. The proposed revisions were intended to address current problems in this subject area. Fifty-eight comments were received and are being analyzed to determine the most appropriate policy posture to take to reduce potential abuses of consulting contracting.

O. Small Business Procurement. On July 22, 1982, the President signed the Small Business Innovation Development Act (Public Law 97-219) authorizing a small business innovation research (SBIR) program for certain qualifying agencies. The Small Business Administration was given the responsibility for issuing policy directives, in consultation with OFPP, for the "general conduct of the SBIR programs within the Federal Government." These directives, published in the Federal Register on November 24, 1982, provide for "simplified, standardized, and timely SBIR solicitations." OFPP is also serving on a committee, chaired by the

Office of Science and Technology Policy (OSTP), to evaluate the SBIR programs, pursuant to OSTP's statutory responsibility.

P. Small and Minority Business Policy. OFPP participated in various working groups headed by the White House Office of Policy Development, leading to the promulgation of President Reagan's Minority Business Enterprise statement of December 17, 1982. The statement committed the Federal Government to "procure an estimated $15 billion in goods and services from minority businesses" in a three-year period (i.e., FY 1983, 1984, and 1985). It also set a goal of procurement under grants from minority businesses of $6-7 billion during those same three fiscal years. OFPP continues to exercise its responsibilities under Public Law 95-507 to assure that this legislation for small and minority business works effectively without unduly impeding the procurement process. As required, OFPP will continue to meet its responsibility under Section 221 of Public Law 95-507 to resolve disputes between the Small Business Administration and the agencies regarding goals.

Q. International Agreement on Government Procurement. The Agreement on Government Procurement was one of a number of codes negotiated to alleviate non-tariff barriers to trade during the Tokyo Round of the Multilateral Trade Negotiations in Geneva. These negotiations were completed in early 1979 and the codes, including the Agreement on Government Procurement, were enacted into law as part of the Trade Agreements Act of 1979. Executive Order 12260, signed on December 31, 1980, represented the next development in implementing the Agreement. OFPP participated in the development of this Executive Order as a member of the Subcommittee on Government Procurement, chaired by the U.S. Trade Representative's Office. Implementing regulations were then developed by the Department of Defense and General Services Administration for publication in the Defense Acquisition Regulation and Federal Procurement Regulations, respectively. OFPP worked with the subcommittee to achieve maximum uniformity in these regulations. The office will continue to track trade legislation as it affects Government procurement and will work closely with the U.S. Trade Representative in preparation for the 1984 renegotiation of certain aspects of the original Agreement on Government Procurement.

R. Boards of Contract Appeals. Under the Contract Disputes Act (41 U.S.C. 601 et seq.), the Administrator for Federal Procurement Policy is authorized to allocate positions to agency Boards of Contract Appeals (BCA). The Act requires that the workload studies used to allocate positions to the Boards be updated every three years. At the Administrator's request, an interagency task group of BCA judges recently developed and recommended criteria to be used in updating the studies. OFPP is now reviewing the updated caseload studies in anticipation of issuing a revised policy letter.

S. Federal Acquisition Institute Initiatives. Procurement managers have long sought a professional procurement work force. The Hoover Commission, the Commission on Government Procurement and the Comptroller General have consistently recommended strong career programs for the purpose of developing professional contract business managers who can exercise proper initiative and judgment in making the Government's complex and vital business decisions. In the final analysis, the Federal procurement system cannot work effectively without such professionals, a view which is fundamental to both the Administration's proposal for a Uniform Federal Procurement System and Executive Order 12352 on Federal Procurement Reforms. The following describes some of the important activities undertaken by the Federal Acquisition Institute (FAI) to improve the Federal procurement work force. (A listing of FAI publications is included at Appendix D.)

Education

In conjunction with executive agencies, professional associations and academic accrediting associations, the Federal Acquisition Institute initiated a nation-wide education system for procurement. A major objective of the system is to establish a recognized academic body of procurement knowledge as the cornerstone of the procurement profession and to provide a source of quality personnel for recruitment by procurement managers.

Currently, the number of colleges and universities which offer concentrated procurement programs or procurement-related courses has increased from the 43 reported in October 1980 to approximately 300. This represents a sevenfold increase in two years. Although some programs antedate the Federal Acquisition Institute, many are the direct result of the FAI education effort.

In April 1982, an Interagency Academic Review Committee was established to review and assure that academic procurement courses meet the needs of the Federal entry-level work force. Current and expected benefits of the Academic Program Review project include: (1) a closer relationship between the providers of education and the users; (2) prompt communication of new procurement skill and knowledge requirements; (3) institutionalization and maintenance of a Government-wide academic review system; and (4) expanded opportunities for entry-level work force personnel to meet mandatory training requirements. In a pilot effort, seven academic program reviews were conducted, and five procurement curricula were approved by the Defense Department as equivalent to comparable Defense courses.

The education system, as developed to date, has generated collaborative relationships between and among the Federal and private sector procurement communities. As the system continues to evolve and the network of relationships is institutionalized, the education system will contribute to: (1) the expansion of resources for recruitment and career development purposes; (2) the development of improved texts and educational materials; and (3) research to improve business practices and provide a basis for further reforming the procurement system.

Training

During the past several years, the FAI has taken a number of initiatives to: (1) open Defense procurement programs to civilian agencies; (2) strengthen the General Services Administration's training center as a central facility for civilian agencies; (3) conduct research to improve the quality and relevance of procurement training; and (4) develop new instructional materials, especially for the implementation of new Government-wide procurement policies and initiatives. Specifically, the following actions have been taken to improve training:

- The FAI has worked with the Naval Material Command, Army Logistics Management Center and the Air Force Institute of Technology to open their courses to trainees from non-Defense agencies. In particular, the FAI has joined with the Army Logistics Management Center to hold seven sessions of its highly acclaimed basic procurement course in the Washington, D.C. area and in other areas with large non-Defense procurement populations. Several hundred civilian agency employees have been trained in these sessions. Five additional offerings are in the planning stages and will be conducted by June 1983.

- Interagency procurement training is being consolidated, improved and expanded. A Memorandum of Understanding was signed by the Federal Acquisition Institute, General Services Administration and Office of Personnel Management transferring OPM procurement training courses to GSA and establishing GSA as the central source of interagency training for civilian agencies. A Federal Procurement Training Board has been established to support, assist and guide GSA in meeting the training needs of the different agencies.

- New instructional materials are continuing to be developed, including training modules for direct delivery to the job site. Prime examples include: (1) a set of seven videotapes for the Air Force Institute of Technology's contract pricing seminar; (2) a "Desk Guide to Price and Cost Analysis;" and (3) development of a "Procurement Desk Guide" to aid state and local government grantee procurement. Currently under development is a video-based orientation program on the new Federal Acquisition Regulation which is expected to be available for distribution in the fall, 1983.

- More than 9,000 copies of the FAI's "Principles of Government Contract Law," a self-study text, have been distributed nationwide.

Career Management

Training, education and classification are only three facets of a total career management system. Others include work force planning and analysis, recruitment and selection, intern and trainee programs, performance appraisal, incentive awards, certification and contracting officer qualifications. All of these functions, combined and integrated as part of a systematic procurement career program, are essential to building and maintaining a fully professional work force. A noteworthy accomplishment in this respect was inclusion of a requirement in Executive Order 12352 that agencies establish procurement career management programs covering the full range of personnel management functions under Procurement Executives.

- Work Force Planning and Analysis. The Federal Acquisition Personnel Information System (FAPIS), established in 1980, has been significantly upgraded. This system now features a five-year moving data base for tracking trends in hiring, separations, promotions and organizational, as well as geographic, mobility.

- Recruitment and Selection. The Office of Personnel Management has long required agencies to fill entry-level procurement positions through the Professional and Administrative Career Examination (PACE). On January 18, 1982, the Government agreed to a Consent Decree requiring elimination of PACE. The FAI has worked with OPM and procurement managers since then on the development of a successor to PACE.

- Intern and Trainee Programs. The FAI has prepared guidance on "Centralized Intern Programs: The Selection and Development of Personnel for Future Full-Performance Level and Management Positions." This publication depicts the purposes, establishment, organizational placement, administration and evaluation of intern programs.

- Performance Appraisal. The FAI organized several seminars for procurement managers on the new performance appraisal systems of the Civil Service Reform Act. These seminars were conducted by OPM.

- Incentive Awards. The FAI issued a report on "Procurement Work Force Incentive and Motivation," which discusses methods for (1) publicizing and rewarding outstanding performance, (2) encouraging participation in self-education and professional associations, and (3) improving morale within the procurement work force.

- Certification. Assisted by the FAI, a Consortium of National Professional Associations has been established, and its members have signed a Memorandum of Understanding for the formation of a Council on General Certification in Procurement and Materiel Management. The Council will prepare a universal first-level certification program for procurement based on a single Government/industry standard for professional knowledge and competence.

- Contracting Officer Qualification Requirements. The FAI has prepared guidance on the skills and knowledge required to properly exercise the responsibilities and authority vested in contracting officers, and programs for assuring that all such contracting officers have the necessary experience, education and training prior to appointment.

Research

The Institute continues to co-sponsor annual acquisition research symposiums with the Department of Defense. Planning is underway for the eleventh annual Federal Acquisition Research Symposium to be held in December 1983.

The Procurement Automation Council was chartered by the FAI, with the Department of Energy as lead agency, to study and promote procurement automation efforts throughout the Government. The Council published the "Compendium of Automated Procurement Systems in Federal Agencies" which identifies and catalogs 131 automated procurement systems in use in 20 Federal agencies.

Library Services

The FAI Library provides a unique and comprehensive collection of materials on the procurement profession. The Library is dedicated to the procurement community, both public and private. Many of the library's materials -- including audiovisual products -- are available directly and through inter-library loan services. During 1982, research assistance was provided to about 1,000 individuals and organizations.

CHAPTER VI:

PLANS AND OBJECTIVES

OFPP's plans for the future -- both short and long term -- are predicated on enactment of legislation to reauthorize the office and transfer the Federal Acquisition Institute to the General Services Administration by the end of the current fiscal year. The office's goals and objectives also assume that the responsibilities and functions of the OFPP and the FAI will remain essentially unchanged by the reauthorization and transfer legislation.

Long-Range Plans and Objectives

Much of OFPP's long range program is a continuation of procurement improvement initiatives contained in the Reform '88 program and Executive Order 12352, and the statutory responsibility to develop and issue Government-wide procurement policies. OFPP will continue to provide leadership in developing new policies and procedures, to be the focal point for the cross-fertilization of ideas and initiatives among agencies, and to identify the need for legislation affecting Federal procurement. The office will also continue to monitor the role that the Procurement Executive plays in each agency, and work to ensure that the procurement function is given proper recognition in carrying out agency mission responsibilities. The objective in this effort is not to aggrandize the procurement function, but to assure that the business expertise, negotiating skills and other necessary capabilities of contracting officers are fully and properly utilized in making program decisions, and that contracting officers are given a role commensurate with their accountability.

It is estimated that the body of procurement reforms encompassed in the Reform '88 program, when fully implemented, could generate annual savings in the $2-$9 billion range. Those savings would result from such reforms as system simplification, increased competition, reduced lead times and an improved work force.

OFPP will continue its leadership role in connection with the Federal Acquisition Regulation, which is scheduled to become effective on April 1, 1984. Even though the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration have been assigned responsibility for completing, implementing and maintaining the FAR, much work remains to be done by OFPP. This work will be focused on coordinating the necessary training, developing training materials, counseling agencies as they restructure their implementing regulations into the FAR format and facilitating the resolution of differences between DOD, GSA and NASA on the content of the FAR itself.

The office has begun to develop a prioritized list of areas where policy development or revision is needed, based on inputs from agencies and industry associations. An interagency task group will be established for each issue that can be resolved by executive branch or industry action. Legislative changes will be proposed where needed.

Some problem areas will require executive branch review, testing and evaluation to serve as a basis for proposing legislative changes. Specific legislative authority will be required to test innovative procurement methods and procedures. Included among the tests will be: (1) the development of simplified procedures for small purchase and commercial product acquisitions; (2) the provision of company-wide subcontracting plans; and (3) the development of alternative procedures for attaining non-procurement objectives. In particular, there is a need to address the establishment of uniform and reasonable thresholds for the application of socio-economic programs in Federal procurement. Many of these programs still apply to all procurements, or have low thresholds established as much as 50 years ago. Economic conditions have changed over the years so that, in the view of many persons, such programs now represent an unreasonable burden on millions of low dollar value transactions, without commensurate benefits.

To improve the procurement work force, the Federal Acquisition Institute will:

- continue working to establish an academic body of knowledge that is comprehensive and uniform throughout academia, supported by appropriate texts, educational materials and faculty;
- work with Federal agencies toward the development of a Government-wide procurement training system to meet the needs of all the executive agencies;
- promote the establishment of operational career management systems in all the major procuring agencies, as well as the development of programs and procedures for evaluating career management systems;
- develop plans for expanding the Federal Acquisition Personnel Information System and making it a more viable support system for procurement managers; and
- continue to work for the establishment of an operational procurement research system and program.

Short-Range Plans and Objectives

Reform '88. During the next eighteen months and thereafter, the principal focus of OFPP's activities and those of the FAI will be to oversee implementation of the procurement reforms contained in the Administration's Reform '88 program and Executive Order 12352. Changes, both in legislation and in administrative procedures, will be sought. Specifically, legislation will be supported to (1) enhance competition by curtailing the number of circumstances authorized for awarding contracts noncompetitively; and (2) reauthorize OFPP so it can continue its leadership role in procurement reform. Legislation will also be proposed to increase the small purchase ceiling for civil agencies to $25,000. In addition, the administrative reforms described in Executive Order 12352 will be implemented. Principal among these are: (1) adoption and implementation of the single, simplified Federal Acquisition Regulation by all executive agencies; (2) adoption by each agency of a detailed charter delineating the roles and responsibilities of its

Procurement Executive; and (3) improving the recruitment, selection, training, education, appraisal and classification of procurement personnel. Further guidance will be furnished to the agencies on reducing administrative costs and paperwork, establishing clear lines of contracting authority, creating effective career management programs and establishing procurement system standards and certification processes.

Planned OFPP Policy and Program Initiatives. In addition to those projects or policies which are identified with the implementation of Executive Order 12352 and Reform '88, OFPP will continue to develop and revise procurement policies in several other areas of Government-wide interest. One of the most important is the development of policies to restrict noncompetitive procurement. Agency reports to the Federal Procurement Data Center indicate year after year that over one-third of all Federal procurement, not including follow-on contracts, is noncompetitive.

Other significant areas of planned policy development and refinement are: revision of OMB Circular No. A-109 on Major System Acquisitions; recoupment of nonrecurring research and development costs; cost sharing in research and development; definition and treatment of unsolicited proposals; continued implementation and refinement of OMB Circular No. A-76 on contracting with the private sector; profit policy; and improvements in the Federal Procurement Data System.

Internally, the office plans to establish a formal liaison program with executive agencies and industry associations to assure that OFPP policies are effective and responsive to the needs of the Federal procurement community and its suppliers. The liaison program will consist primarily of regularly scheduled meetings with private and public sector executives.

Planned FAI Initiatives. The Federal Acquisition Institute plans several initiatives in support of its basic, on-going mission. Specifically, an interagency procedure will be established to review the adequacy of academic procurement courses, and support and assistance will continue to be provided to colleges and universities in the development of procurement programs and courses. Orientation and other required training materials will be developed in support of the Federal Acquisition Regulation and new OFPP policies and initiatives. The FAI will assist in developing training requirements and standards for entry-level and mid-level procurement personnel, and will work with the General Services Administration and other agencies to establish the GSA training center as the central procurement training facility for civil agencies.

With regard to career management programs, efforts will be aimed at developing: (1) a model career management system for agency application; (2) a small purchase career development program; (3) a procurement executive development program; (4) a centralized interagency procurement intern program; (5) a career management system evaluation procedure; and (6) a more effective Federal Acquisition Personnel Information System (FAPIS). Short-range plans to enhance procurement research include providing support in planning and conducting the annual DOD/FAI research symposium, working with the Procurement Automation Council and identifying research needs and resources in support of Federal procurement reform initiatives.

CHAPTER VII:

CONCLUSION

Much has been accomplished during the past two years to improve the efficiency and effectiveness of the Federal procurement process. Much more needs to be done, as reflected in the procurement reform agendas of Executive Order 12352 and Reform '88, and the blueprint for improvement provided by the statutorily-mandated Uniform Federal Procurement System proposal.

In reviewing accomplishments of the office to date, it is clear that little would have been achieved without the interest of the Administration, the support and counsel of the Congress and the cooperation and assistance of the executive departments and agencies.

The Administration, at all levels, has been interested in, and receptive to, procurement reform. This was best demonstrated by President Reagan's issuance of Executive Order 12352 -- the first executive order in history dedicated to the subject of procurement. During recent months, the Cabinet Council on Management and Administration has played an instrumental role in encouraging the procurement reform process and in focusing top level Administration attention on the various reform initiatives.

The chairmen and members of the Senate Committee on Governmental Affairs and the House Committee on Government Operations also deserve special recognition. These Committees and their staffs provided guidance and constructive criticism throughout the reporting period.

The executive agencies were responsible for implementing OFPP policies. In addition, many executive agencies contributed their staffs and resources to help develop and refine these policies. The Department of Defense and the General Services Administration, in particular, dedicated significant resources to the Federal Acquisition Regulation effort and other policy initiatives. Members of the public and many private organizations provided assistance to OFPP in the form of commenting on proposed policies and programs. Without this cooperation from the agencies and the public, many OFPP accomplishments would not have been attainable.

OFPP recognizes its special authority and responsibility for exercising leadership to improve Federal procurement. This authority and responsibility will continue to be exercised in a diligent, dedicated manner. The desired improvements, however, can only be achieved with the continued support and mutual commitment of Congress, the executive agencies and departments and the public. OFPP looks forward to this continued assistance and counsel.

ENCLOSURE 2

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

OFFICE OF MANAGEMENT AND BUDGET
Office of Federal Procurement Policy

Invitation for Public Comment

Agency: Office of Federal Procurement Policy (OFPP), Office of Management and Budget

Action: Request for comment on proposed OFPP Policy Letter.

Summary: The Office of Federal Procurement Policy is requesting public and Government agency review and comment on a proposed Policy Letter relating to bid protests.

The subject of bid protest procedures has been studied by a number of public and private groups, including the Commission on Government Procurement. To respond to these studies and to develop Government-wide procedures for bid protests, OFPP convened an interagency group consisting of representatives of a number of agencies with large procurement responsibilities, the Small Business Administration, and the General Accounting Office. The proposed coverage developed by this interagency group places responsibility for resolving bid protests with the procuring agency while recognizing the role of the General Accounting Office when it considers bid protests brought to its attention.

As a related action, the General Accounting Office will review its bid protest procedures, with particular attention to describing issues that it will not consider in bid protests.

Date: Comments must be received on or before September 21, 1981.

Address: Comments are to be submitted to the Office of Federal Procurement Policy, Office of Management and Budget, Room 9013, New Executive Office Building, 726 Jackson Place, N. W., Washington, D. C. 20503.

For Further Information Contact: Ms. Patricia A. Szervo, Associate Administrator for Procurement Law and Legislation, (202) 395-3501.

Donald E. Sowle

Donald E. Sowle
Administrator

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

JUL 17 1981

POLICY LETTER 81-4

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policy Guidance Concerning Government-Wide Bid Protest Procedures

A. FORMAL ADVERTISING

1. Bid protests.

(a) Definitions. As used in this part, "bid protest" (or "protest") means a written protest by a bidder or other interested party, against the award or proposed award of an advertised contract. The term includes protests based on alleged improprieties in an invitation for bids. It does not apply to questions regarding small business status or eligibility under the Walsh-Healey Public Contracts Act.

"Designated official," as used in this subsection, means an agency official, at a level high enough above that of the contracting officer to ensure: (1) detachment from the immediate controversy; and (2) the exercise of independent judgment, whom the agency designates to decide protests.

(b) Policy

(1) Agencies are responsible for deciding or otherwise resolving bid protests. Agency responses to protests shall: (i) be objective, fair and prompt; and (ii) reflect consideration of all applicable procedures, regulations, precedents and laws, and of the Government's requirements.

If the designated official finds that a protest has merit, the agency shall take appropriate corrective action (such as termination for convenience) consistent with the Government's requirements and with the need for fair and equal treatment of all bidders. Unless exceptional circumstances (see subparagraph (e)(4) below) dictate otherwise, agencies shall decide or otherwise resolve all protests filed before award prior to taking any contractual action.

(2) Designated officials shall: (i) consider all timely (see subparagraph (d)(1) below) protests, whether submitted before or after contract award; and (ii) respond with a written decision unless the protest is otherwise resolved.

(3) A protest may be filed with the Comptroller General, in accordance with the GAO's bid protest procedures promulgated in Title 4, Code of Federal Regulations (CFR), Chapter I, Part 21. Agencies may obtain the GAO's views regarding a protest whether or not it has been filed with the GAO.

(4) Agencies shall, by a statement in their Invitation for Bids (IFBs), notify offerors of the policy and procedures of this section so that an offeror's attention will be directed to the applicable requirements for the filing of a bid protest.

(c) General

(1) Designated officials shall: (i) dispose of all bid protests within their cognizance, including those determined to be untimely; and (ii) document these dispositions fully.

(2) Agencies shall furnish all bidders having a reasonable prospect of receiving an award if the protest is denied (or the contractor, if award has been made) --

(i) notice of receipt of the protest,

(ii) a copy of the protest, and

(iii) a copy of all supporting information except any withheld as permitted or required by law or regulation.

The notice shall inform these parties of their right to comment on the protest within the time limit established in subparagraph (d)(2) below and, if the protest has been filed with the GAO as well, advise them to send the GAO a copy of their comments. They shall be furnished a copy of any decision responding to the protest.

(3) (i) When a protest has been filed with the GAO and the GAO requests the contracting office to submit a report, the report shall include:

(A) A statement fully responsive to the allegations, setting forth findings, actions, recommendations, and any additional information needed for determining the protest's validity;

(B) Copies of the bids submitted by the protesting bidder and by the bidder whose bid is being protested;

(C) A copy of the invitation for bids;

(D) A copy of the abstract of bids;

(E) A copy of the authorization required by subparagraph (e)(4) below, if award was made after receipt of the protest; and

(F) Copies of any other relevant documents.

(ii) Simultaneously. the contracting office shall furnish a copy of this report (except for any information withheld under law or regulation) to:

(A) the protester, and

(B) other interested parties with instructions to furnish any comments they may wish to make on the report to the GAO and the contracting office within the GAO's time limits (see 4 CFR 20.3).

(iii) Whenever the GAO informally advises the contracting office that a protest has been received, the contracting office should begin compiling its report, in anticipation of a formal request.

(4) The contracting office should not delay or suspend consideration of a protest when the protest has been filed also with the GAO, but it shall ordinarily suspend its own final action on the protest pending receipt of the Comptroller General decision (see subparagraph (e)(3) below).

(5) To facilitate the exchange of information regarding protests filed also with the GAO, agencies shall --

(i) Furnish the GAO the name, title, and telephone number of one or more officials to serve as contacts; and

(ii) Promptly advise the GAO of any change of these officials.

(6) Agencies shall promptly advise the GAO of any judicial proceedings involving a protest pending before the GAO.

(d) Time limits and objectives. The time limits for filing protests and comments, and objectives for prompt disposition of protests, are as follows:

(1) Filing of protests. To be timely, protests must be received at the contracting office in writing either:

(i) Before bid opening, if based upon alleged improprieties in an invitation for bids that are apparent before bid opening, or

(ii) In other cases, within 10 working days after the basis for protest is known or should have been known, whichever is earlier.

A complete statement of the grounds of protest must be filed within these time limits; mere notice of protest, to be followed later by details, does not make a protest timely. Any protester attempting to register a protest orally with the Contracting Officer shall immediately be informed of these requirements.

(2) Comments by interested parties. To be considered, interested parties' comments on protests must be received at the contracting office within 10 working days after the party receives a copy of the protest.

(3) Reports to the GAO. The contracting office shall --

(i) Furnish reports required by the GAO ordinarily within 25 working days after receiving a formal request;

(ii) Promptly inform the GAO whenever additional time is required; and

(iii) Expeditiously furnish other information requested by the GAO.

(e) Protest disposition

(1) If a bid protest filed with the contracting office is not timely, it may be dismissed and award may be made in the normal manner, unless the designated official determines that:

(i) the protest should be considered nevertheless, or

(ii) corrective action is required.

(2) To avoid any need for resolicitation because of expired bids, before bids expire, the contracting office should request:

(i) any bidder to whom award is proposed, and

(ii) any others whose bids might become eligible for award, to extend the time for acceptance (with the consent of any sureties), unless the chief of the contracting office authorizes award before a decision on the protest. If extensions cannot be obtained, the contracting office should consider proceeding with award under subparagraph (4) below.

(3) After considering all pertinent information regarding a protest, the designated official shall promptly decide the matter. However, if the protest has been filed with the GAO, the contracting office shall withhold award or other final action until the GAO completes its review of the matter, unless exceptional circumstances, as set forth in subparagraph (4) below, necessitate an earlier award or other final action. In such cases, informal advice on the status of the GAO's deliberations should be taken into account if circumstances permit. If the decision is made to proceed before the Comptroller General issues a decision, the GAO shall be given prompt notice and an explanation.

(4) If a bid protest is received before award, no award shall be made or other final action taken until it is resolved, except in exceptional circumstances, and then only with the advance authorization of the chief of the contracting office. That official shall promptly furnish a copy of any such authorizations to the agency head or a designee, who shall maintain a file of them. Each authorization shall explain the exceptional circumstances justifying award prior to resolution of the protest. Examples of such circumstances are situations in which:

(i) The supplies or services to be acquired are urgently required;

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will otherwise be in the Government's interest.

(5) If the designated official finds that a protest, timely or not, received after award has merit, and a delay in contract performance will not harm the Government, that official should consider suspending contract performance until the protest is resolved.

(f) Protest data. Agencies shall establish procedures:

(1) For maintaining data showing the number and nature of protests received, their disposition, and time required for disposition; and

(2) Providing for annual review of the data for acquisition management purposes.

B. CONTRACTING BY NEGOTIATION

1. Protests against award

(a) Definition. As used in this part, "protest against award" (or "protest") means a written protest by an offeror or other interested party, against the award or proposed award of a negotiated contract. The term includes protests based on alleged improprieties in a request for proposals or for quotations. It does not apply to questions regarding small business status or eligibility under the Walsh-Healey Public Contract Act.

(b) Procedures. Protests against award shall be handled in substantially the same manner as bid protests except that:

(1) The deadline established by bid opening in subparagraph 1(d)(1)(i) for Formal Advertising is replaced by a deadline established by the time set for the receipt of proposals; and

(2) Other terms and procedures peculiar to Formal Advertising are similarly replaced by their negotiation counterparts.

Donald E. Sowle

Donald E. Sowle
Administrator

ENCLOSURE 3

FAR COVERAGE OF BID PROTESTS

Protests against award are covered in the FAR Section 14.407-8. Significant factors included in the FAR coverage are:

I. Protests to Agencies - Generally

1. Contracting officers are required to consider all protests or objections to the award of a contract whether submitted before or after award.

2. Protests may be made orally or in writing. When the contracting officer is unable to resolve an oral protest made to the agency, written confirmation of the protest is required.

3. The protester must be provided with a final decision in writing after agency consideration of the written protest.

4. Protests may be lodged with the contracting officer, a higher agency authority, or the GAO. Where such a protest has been made to the GAO or higher agency authority, the contracting officer, upon request of such authority or the GAO, is required to submit a comprehensive report containing all pertinent information relating to the protested procurement action. The FAR coverage sets forth detailed guidance as to the contents of the contracting officer's report (14.407-8(a)(2)).

5. In appropriate cases, notice of the protest is required to be given to affected bidders and other interested parties who may submit their views and relevant information concerning the protest.

6. Timeliness of action in resolving protests is stressed as "essential". Reports submitted to the GAO are simultaneously provided to the protester. Agencies are required to furnish the GAO with the name and telephone number of the official or officials that the GAO may contact concerning the protest.

II. Protests Before Award

1. When a protest is received before award and the contracting officer determines to withhold award pending resolution of the protest, bidders whose bids may become eligible are informed of the protest and requested to extend the period for which their bids are eligible for award.

2. The contracting officer may require written confirmation of a protest within a specified time and inform the protester that an award will be withheld for that specified time. If the written protest is not received within the specified time, the protest may be disregarded and award made.

3. When a written protest is received, award shall not be made until the matter is resolved, unless the contracting officer determines, in writing, that:

   - The requirement is urgent;

   - Performance or delivery will be unduly delayed by failure to make the award promptly; or

   - A prompt award will otherwise be advantageous to the Government.

4. If award is to be made prior to resolution of the protest, the contract file shall contain a determination by the contracting officer explaining the need for immediate award. The protester shall be given notice of the decision to proceed with the award.

5. When it is known that a protest has been lodged with the GAO, the determination to make an award under the circumstances cited in Item 3 above must be approved at a level above the contracting officer in accordance with agency procedures.

III. Protests After Award

1. Protests after award shall be handled in accordance with agency procedures. Notice of the protest shall be given to the contractor.

2. When it appears likely that the award may be invalidated and a delay in receiving the supplies or services will not be prejudicial to the Government's interests, consideration should be given to seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

WILLIAM V. ROTH, JR., DEL., CHAIRMAN

CHARLES H. PERCY, ILL.
TED STEVENS, ALASKA
CHARLES MC C. MATHIAS, JR., MD.
WILLIAM S. COHEN, MAINE
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JEFF BINGAMAN, N. MEX.

JOAN M. MC ENTEE, STAFF DIRECTOR
IRA S. SHAPIRO, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, D.C. 20510

SUBCOMMITTEE
WILLIAM S. COHEN, MAINE, CHAIRMAN

WARREN B. RUDMAN, N.H.
JOHN C. DANFORTH, MO.

CARL LEVIN, MICH.
JEFF BINGAMAN, N. MEX.

SUSAN M. COLLINS, STAFF DIRECTOR

April 9, 1983

Dear :

As you know, the statutory authorization of the Office of Federal Procurement Policy (OFPP) expires on September 30, 1983. I have recently introduced legislation, cosponsored by Senator William Roth, chairman of the Governmental Affairs Committee, which would reauthorize the OFPP for an additional five years.

This legislation represents the Committee's starting point in its consideration of the reauthorization of the OFPP. Your written responses to the following questions would be extremely helpful in our review of this important issue:

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

    A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

    B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

D. Are there other authorities which you feel the OFPP should have?

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

In addition, please comment on any other issues that you feel we should consider in our review of the reauthorization of the OFPP.

I would appreciate your providing me this information as soon as possible. If you have any questions, please contact Jeff Minsky or Win Cashdollar of my staff at (202) 224-5538.

Responses should be directed to the Subcommittee on Oversight of Government Mangement, Committee on Governmental Affairs, SD-326, Washington, D.C. 20510.

Thank you for your cooperation.

Sincerely,

William S. Cohen
Chairman

WSC:jam

THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

2 8 APR 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate, SD-346
Washington, D.C. 20510

Dear Bill:

This responds to your recent request for comments on several questions bearing on pending legislation to reauthorize the Office of Federal Procurement Policy (OFPP) beyond September 30, 1983.

We believe that continuation of OFPP's current role of working jointly with the Executive Agencies to provide overall leadership and broad policy guidance in areas of Government-wide procurement policy is desirable. Although we are of the opinion that this responsibility could best be accomplished by administrative action to continue its performance under the Office of Management and Budget, we can support a legislative approach.

Our comments are attached. I hope that you will find our responses to your specific questions constructive. We have supported and will continue to support continuation of OFPP consistent with the authority expressed by the President in Executive Order 12352, Federal Procurement Reforms.

Sincerely,

Attachment
a/s

Comments on Questions Raised Concerning Reauthorization of the Office of Federal Procurement Policy

1. Should the Office of Federal Procurement Policy (OFPP) be reauthorized? If so, for how many years?

   Comment: We clearly support continuation of OFPP's role of working jointly with the Executive Agencies to provide overall leadership and broad policy guidance on Government-wide procurement policy matters. A five-year reauthorization, as recommended by Mr. Wright, Deputy Director, Office of Management and Budget, in his testimony on H.R. 2293 before the House Legislation and National Security Subcommittee is acceptable.

2. A. Should OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   Comment: We can accept continuation of OFPP's present legislative authority. This appears to be consistent with the OFPP role depicted by the President in Executive Order 12352.

   B. Should the OFPP have regulatory authority as originally provided in the OFPP Act of 1974?

   Comment: The Deputy Director, Office of Management and Budget, in his testimony on H.R. 2293 stated that: "The Office (OMB) has not sought regulatory authority (for OFPP) because we believe that we can function effectively without it. We do not envision OFPP, with its small staff, becoming heavily involved in the regulatory process." We support that position. The expansion of OFPP's authority to issue regulations binding on the Executive Agencies would return to a system that apparently was found to be less than satisfactory and was corrected by the 1979 amendments. Further, it could conflict with the responsibilities of the Executive Agencies.

   C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of OMB and the Congress?

   Comment: We can support and do not object to a broad authority for OFPP to test new procurement concepts which may help provide a further basis for effecting necessary improvements to existing procurement systems.

   D. Are there other authorities which you feel the OFPP should have?

   Comment: We believe that OFPP would need no additional authorities in addition to those covered above to provide the leadership and guidance necessary to achieve needed procurement reforms.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

   Comment: We see no need for such action. The Executive Order clearly provides direction to the heads of Executive Agencies to ensure compliance with these management responsibilities.

4. Has OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   Comment: OFPP has been performing its role in the furtherance of the requirements established by Executive Order 12352. We know of no statutory or administrative impediment to OFPP's performance of its responsibilities.

APR 28 '83

GSA General Services Administration Washington, DC 20405

APR 26 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your April 7, 1983, letter regarding the bill which you and Senator Roth have introduced to reauthorize the Office of Federal Procurement Policy (OFPP).

The Office of Management and Budget (OMB) testified in the House of Representatives that the Administration is in favor of reauthorizing OFPP, and the General Services Administration defers to OMB on this issue.

Regarding OFPP's authority, the Administration generally supports the 1979 amendments to the OFPP Act (Public Law 96-83). However, the reference to a Uniform Procurement System should be deleted. The ongoing activities under Executive Order 12352 issued by the President on March 17, 1982, and the completion of the implementation of the recommendations of the Commission on Government Procurement should adequately deal with the matters involved. There is no need for extending its authority to include regulatory functions.

With respect to an authority to test new procurement procedures, the Administration favors making such authority available for agency use. Certainly, we should endeavor to improve the procurement process by every means that appropriately can be made available.

You also asked for our views on Congress passing legislation prescribing agency management responsibilities, which are set forth in the first section of Executive Order 12352. The Administration believes that the treatment of the matter in the Executive order is sufficient to ensure Agency compliance and that legislation is not necessary.

GSA defers to OMB on the question of whether OFPP has been effective in fulfilling its statutory mandate.

Finally, you invited our comments on any other issues we feel should be considered. No doubt you are aware that discussions have been underway for some time regarding the matter of transferring the Federal Acquisition Institute from OFPP to GSA. This transfer is provided for in the President's FY 84 budget, and we are in complete accord with the idea.

GSA has had many years of experience with FAI-related matters. During the 1960s, GSA operated very extensive training programs through the GSA Institute. In more recent years, we have operated the GSA Training Center which offers a significant number of procurement courses for all Government agencies. The number of courses, the frequency of offerings, and the number of enrollees have been increasing steadily. The FAI has designated GSA as the lead civilian agency in procurement training. It should be noted that employees from the Department of Defense represent a majority of the students trained through this center.

GSA is vitally concerned with FAI's role in the professionalization of the workforce. We believe it to be essential to any improvement in the Government procurement process. It is imperative that current consideration of classification standards for procurement personnel be concluded satisfactorily.

The transfer would complement and strengthen the Executive branch's ability to concentrate and deliver programs to improve the procurement process in all agencies. Locating the FAI's functions and responsibilities within an organization that has the responsibility for the development and issuance of the new Federal Acquisition Regulation would increase the ability to identify problems and develop comprehensive methods to correct weaknesses. Mechanisms for interagency coordination and cooperation have been established. GSA can and will provide the necessary resources and leadership to accomplish the Institute's mission to improve Government procurement through research, education, training and career development.

In our view, it would be highly desirable for and advantageous to the Federal Government for GSA and FAI to join forces. We encourage your favorable consideration of the transfer through the enactment of appropriate legislation.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

We appreciate the opportunity to provide these views.

Sincerely,

ADMINISTRATOR

THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

[illegible] 29 PM 1:32

April 28, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
United States Senate
Washington, D. C. 20510

Dear Senator Cohen:

Thank you for your letter requesting our views on the proposed legislation reauthorizing the Office of Federal Procurement Policy (OFPP) for an additional five years. The Department of Energy is strongly supportive of the concepts of procurement reform embodied in both the original OFPP legislation (Public Law 93-400) and Executive Order 12352. However, since the enactment of Public Law 93-400, we believe many steps have been taken to implement the recommendations of the Commission on Government Procurement to accommodate necessary reforms in Government procurement.

Under the auspices of Executive Order 12352, the OFPP has established six interagency task groups to recommend action on many of the procurement reform concerns which would be a subject matter under your proposed bill. The task groups of the executive agencies, under the leadership of the OFPP, are presently working with a deadline of December 1983, to effectuate these recommendations. We believe the implementation of these recommendations will accomplish the initial requirements of Public Law 93-400 and subsequent Executive Order 12352.

For the foregoing reasons we offer the following comments keyed to your April 7, 1983, letter:

1. We believe the OFPP should be retained as an office for the purpose of establishing continuity and consistency of procurement policy within the executive agencies for a minimum of five years, preferably longer.

2. (A) We have no objection to a legislative extension of OFPP's present authority as provided in the 1979 amendments to the OFPP Act.

   (B) The OFPP has never had sufficient personnel and resources to function in a regulatory capacity. Absent a single procurement statute, we believe the OFPP should have the function of providing policy guidance and not have regulatory authority. In any case, all the executive branch agencies are actively involved in the development of a single unified Federal Acquisition Regulation as contained in the OFPP proposal for a Uniform Procurement System and required by Executive Order 12352.

(C) We fully support the testing of innovative procurement techniques as envisioned in the proposed Uniform Federal Procurement System.

(D) This is more properly stated in a negative manner. Some versions of this bill would allow the OFPP to unilaterally direct the resources of agencies to assist in studies, etc., in the performance of their mission. We categorically oppose such a position.

3. As stated earlier, the OFPP has established six interagency task groups to study and provide recommendations to the executive agencies on responsibilities and methods of implementing the first section of Executive Order 12352. We believe Congressional prescription unnecessary.

4. The OFPP by its enabling legislation, Public Law 93-400, was tasked to perform a regulatory function that it was not staffed for and therefore incapable of performing. The requisite expertise lay in the independent regulatory agencies. In our opinion the OFPP should provide leadership for the procurement function in considering issues of Government-wide significance but leave operational procurement decisions to the management discretion of the executive branch agencies.

Should you have any questions on this matter, please contact Bob Walsh of my staff at (202) 252-8188.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410

1983 MAY 12 AM 8 38

May 9, 1983

MAY 12 '83

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Cohen:

Thank you for your letter of April 7, 1983, requesting my responses to questions concerning the reauthorization of the Office of Federal Procurement Policy (OFPP). Responses to the specific questions are as follows:

1. Should the OFPP be reauthorized? If so, for how many years?

   Response: Yes. For five years.

2. A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   Response: Yes.

   B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

   Response: No. Their existing authority allows them to function effectively.

   C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and Congress?

   Response: Yes. But the waiver authority should not be limited to socio-economic thresholds alone. Any legislative provision which might inhibit efficient and effective procurement practices should be subject to this authority.

   D. Are there other authorities which you feel the OFPP should have?

   Response: OFPP should have a major role in developing viable programs for its training, recruitment and career development of procurement personnel.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

   Response: No. The requirements of the Executive Order are being pursued aggressively. Legislation is unnecessary.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   Response: Yes.

Thank you for the opportunity to comment. If you have any questions concerning these responses, please contact Roosevelt Jones, Director, Office of Procurement and Contracts, at (202) 755-5290.

Very sincerely yours,

Samuel R Pierce Jr

Samuel R. Pierce, Jr.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

April 25 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
  of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is a reply to your letter of April 7, 1983, requesting the Department of Agriculture's views on several questions concerning statutory reauthorization of the Office of Federal Procurement Policy (OFPP).

For clarity, each question posed in your letter is restated and followed by this Department's response.

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   Response:

   We strongly support statutory reauthorization of OFPP for a minimum of 5 years. It is essential that the OFPP continue as the focal point for coordinating Federal procurement reforms as outlined in Presidential Executive Order 12352.

2A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   Response:

   Except as noted in our response to question 2C below, OFPP's authority as provided under the 1979 amendments to the OFPP Act should be renewed, without increasing or expanding the functions or responsibilities of the office.

2B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

Response:

We do not consider it is necessary for OFPP to have specific regulatory authority beyond that provided in their 1979 reauthorization legislation. We view OFPP's role in the regulatory process as that of leading and coordinating the development of Government-wide procurement policy. OFPP currently has ample authority to mandate changes in Government-wide procurement policy, direction, and management through Executive Order 12352. Consequently, we see no need for another layer of regulatory authority on the Federal procurement process.

2C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Response:

We strongly support giving OFPP the flexibility to implement innovative procurement methods and procedures on a trial basis. We do not object to OFPP's providing advance information to appropriate Congressional committees and to the Director of OMB prior to invoking such authority. However, if this trial authority is to be truly useful in testing new and innovative ideas that will affect the procurement process, then such testing should be allowed to proceed unencumbered by direct supervision from the Congress or other external sources. Where positive results indicate that substantive changes are needed, we are confident that the Congress will be consulted and given ample opportunity to accept or reject changes, especially where legislation may be needed to bring about such changes.

2D. Are there other authorities which you feel the OFPP should have?

Response:

Additional statutory authorities are not needed by OFPP to promote effective policy direction for Government procurement.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Response:

The Executive Order provides adequate direction and authority to Agency Heads to effect fundamental procurement reforms. We see no need for restating this direction in legislation.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Response:

The OFPP has been a positive force in improving the Government-wide management of the Federal procurement process, through its leadership and policy initiatives.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

John R Block

John R. Block
Secretary

U.S. DEPARTMENT OF LABOR
SECRETARY OF LABOR
WASHINGTON, D.C.

MAY 9 1983

Honorable William S. Cohen
Chairman
Subcommittee on Oversight
of Government Management
Committee on Government Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of April 7, 1983, requesting our response to certain questions concerning legislation to reauthorize the Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget (OMB).

We have reviewed your questions concerning OFPP authority. They involve policy issues over which OMB has overall responsibility. Accordingly, we defer to OMB to express the Administration's position on these matters.

Sincerely,

Raymond J. Donovan

Raymond J. Donovan

Office of the
Administrator
of Veterans Affairs

Washington, D.C. 20420

Veterans
Administration

JUN 6 '83

JUNE 2 - 1983

Honorable William S. Cohen
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to the questions posed in your letter of April 7, 1983.

If I can be of further assistance, please let me know.

We are advised by the Office of Management and Budget that there is no objection to the presentation of these written responses from the standpoint of the Administration's program.

Sincerely,

Everett Alvarez
Deputy Administrator - For
HARRY N. WALTERS
Administrator

Enclosure

QUESTION: 1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

ANSWER: The Veterans Administration (VA) supports the legislation which would reauthorize the Office of Federal Procurement Policy (OFPP) for an additional five years, until September 30, 1988. I believe it is vital that OFPP continues to carry out its responsibilities in order to attain the goals set forth in the Uniform Federal Procurement System, a process which will take many years to accomplish. OFPP also is needed to perform its lead policy role of coordinating and implementing programs in the Federal procurement system.

QUESTION: 2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

ANSWER: The VA agrees with the 1979 amendment to the OFPP Act. Thus OFPP should maintain its present authority of providing overall leadership in procurement policies and procedures with OMB and the Congressional Committees on Government Operations performing oversight over its functions.

QUESTION: B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

2.

ANSWER: OFPP should not have its original regulatory authority, which was rescinded by the 1979 amendments. These gave OFPP the responsibility of providing overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel. To avoid potential conflict between OFPP and GSA, DOD and NASA, which presently have the authority to issue procurement regulations, I believe OFPP's authority should remain as prescribed in the 1979 amendments.

QUESTION: C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

ANSWER: I believe that OFPP should have testing authority, as is provided for in the Uniform Federal Procurement System. This authority would allow the Administrator of OFPP to develop innovative procurement methods and procedures to be tested by selected agencies. The testing authority should be conducted under the guidance of OMB and Congress, and with the concurrence of the agency head involved. Testing involving small business procurement practices should be conducted in conjunction with SBA.

QUESTION: D. Are there other authorities which you feel the OFPP should have?

ANSWER: There are no other authorities that the VA believes OFPP should have.

QUESTION: 3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

3.

ANSWER: The VA concurs with the agencies' management responsibilities set forth in Executive Order 12352. To include these in a statute, in my opinion, would be redundant.

QUESTION: 4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

ANSWER: In my view, because OFPP has effectively fulfilled its statutory mandate, the VA favors its reauthorization. OFPP's presence will be vital in the future to implement both the Uniform Federal Procurement System and the Federal Acquisition Regulations (FAR's).

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 2 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your recent request for the Department of Transportation's views concerning the reauthorization of the Office of Federal Procurement Policy (OFPP). Our answers to the questions you pose are as follows:

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   We believe strongly that OFPP should be reauthorized. There is a need to have overall procurement policy leadersip in one central Federal office, especially since such a large portion of the Federal budget is spent through the procurement process. We recommend that OFPP be reauthorized by statute for five years.

2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

   A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   Yes.

   B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

   No.

C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Yes. The OFPP should have the authority, with proper safeguards, to test innovative procurement procedures, involving the waiver of statutory socio-economic thresholds, for the purpose of identifying areas of the procurement process that could be made more effective.

D. Are there other authorities which you feel the OFPP should have?

No.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

We do not believe it is necessary to incorporate these responsibilities by statute.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Yes.

The OFPP has the key management responsibility for seeing that the procurement reforms initiated through Executive Order 12352 and Reform '88 are achieved. Its reauthorization is necessary to achieve these major improvements in the way the Government does business.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Jim Burnley

Jim Burnley
General Counsel

NASA
National Aeronautics and
Space Administration
Washington, D.C.
20546

1983 MAY 19 AM 11:44

Reply to Attn of HP-1

MAY 19 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

MAY 19 '83

Dear Mr. Chairman:

This letter is in response to your communication of April 7, 1983, to Administrator Beggs in which you requested that the National Aeronautics and Space Administration respond to certain questions regarding reauthorization of the Office of Federal Procurement Policy (OFPP). The questions and our response thereto are as follows.

Question 1.	Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?
Response:	When NASA appeared before the Senate Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, on March 9, 1979, we provided our assessment of the OFPP since its establishment on August 30, 1974, and we expressed the belief that a need was present for a single point in the Executive Branch to be responsible for policies that govern Federal procurement. At that time we recommended that OFPP be continued by legislation for another five years and that it remain as an integral part of OMB. We continue to believe that there is a need for OFPP and recommend a five year reauthorization.
Question 2A.	Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?
Response:	It is our opinion that the 1979 Amendments and the authorities conferred the Administrator of OFPP by E.O. 12352 provide OFPP with sufficient authority to provide the leadership to institute the needed reforms and thereby improve the Federal procurement process.

25th Anniversary
1958-1983

Question 2B. Should the OFPP have regulatory authority, as orignally provided in the OFPP Act of 1974?

Response: Section 2 of E.O. 12352 requires the Department of Defense (DOD), the General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA) to work jointly to consolidate their procurement regulations into a single simplified Federal Acquisition Regulation (FAR). This effort is proceeding smoothly and is rapidly approaching completion. The responsible agencies have established the necessary organizational and procedural mechanisms to maintain the FAR once it becomes effective. We see no need for OFPP involvement. In fact, we believe that to involve the OFPP in the regulatory process would needlessly add another organizational element, unnecesarily prolonging that process and impede the DOD, GSA and NASA from fulfilling their respective statutory mandates in this area.

The Honorable Joseph R. Wright, Jr., the Deputy Director, Office of Management and Budget in appearing before the House Subcommittee on Legislation and National Security on April 7, 1983, regarding the issue, stated "The Office (OMB) has not sought regulatory authority because we believe that we can function effectively without it. We do not envision OFPP, with its small staff, becoming heavily involved in the regulatory process." NASA concurs in this view.

Question 2C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Response: Yes.

Question 2D. Are there other authorities which you feel the OFPP should have?

Response: We believe that OFPP would need no additional authorities in addition to those outlined above to provide the leadership and coordination necessary to achieve any needed procurement reform.

Question 3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Response: In view of the progress being made by the various task groups involved with the implementation of E.O. 12352, we do not believe it necessary for the Congress to mandate by statute the management responsibilities set forth in the E.O.

Question 4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Response: It is our opinion that OFPP has satisfactorily fulfilled its statutory mandate.

There are no other issues regarding the OFPP that we wish to submit for your consideration.

We trust that the foregoing will prove helpful in your deliberations regarding reauthorization of the OFPP.

Sincerely,

John F. Murphy
Assistant Administrator
for Legislative Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 27 '83

APR 21 1983

Senator William S. Cohen, Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs, SD-346
Washington, D.C. 20510

Dear Senator Cohen:

On behalf of Secretary Watt, I am pleased to respond to the questions contained in your letter of April 7, 1983, respecting reauthorization of the Office of Federal Procurement Policy. Your questions and our responses are presented below.

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

We believe that the Office of Federal Procurement Policy (OFPP) should be reauthorized for an additional five years. This period of time will enable OFPP to continue exercising its critical leadership role in coordinating the implementation of Government-wide procurement reforms as required by Executive Order 12352.

2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

We feel it is important that OFPP's present authority be extended under reauthorization legislation. This authority, as a minimum, is required if OFPP is to effectively function in exercising its Government-wide procurement policy responsibilities.

B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

In our opinion, OFPP's original regulatory authority should be restored in order to ensure achievement of the procurement reforms mandated by Executive Order 12352. Without this authority, we believe OFPP's ability to resolve conflicts among agencies with regulatory authority will be seriously impaired.

We believe this authority is of critical importance in achieving successful administration and central oversight of the forthcoming Federal Acquisition Regulation during its initial stage of implementation.

C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

We believe testing authority should be granted to OFPP as it represents a controlled approach in supplying information to Congress on which statutory changes can be based. We feel the concept of testing new techniques, by selected agencies under the supervision of OMB, represents a valid approach toward simplifying and improving the procurement process as it pertains to the accomplishment of agency missions.

D. Are there other authorities which you feel the OFPP should have?

We suggest all authorities of OFPP under existing legislation be retained. We do not feel any other authorities, other than OFPP's original regulatory authority and new testing authority, are required in the reauthorization.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Since agency management responsibilities are already set forth in Executive Order 12352, we do not feel it is necessary or appropriate to include them in the reauthorization legislation.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

In view of its limited authority, we feel OFPP has functioned effectively in accomplishing its legislative mandate. We believe, however, that its effectiveness could be improved by restoring its original regulatory authority. The area of government-wide procurement reform is an extremely complex one requiring adjustments in approach as major accomplishments are made and lessons are learned. On this basis, we believe considerable progress has been made by OFPP since its establishment in 1974. However, if such progress is to continue during the implementation of major reform efforts over the next several years, we think the leadership role of OFPP needs to be strengthened if this organization is to function more effectively.

We appreciate the opportunity to provide our views on this important subject.

Sincerely,

Richard W. Hite

Deputy Assistant Secretary - Policy, Budget
and Administration

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

PLRD/GP-182

MAY 6 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Your letter of April 15, 1983, asked us to answer several questions about reauthorization of the Office of Federal Procurement Policy (OFPP). In the enclosure we address each of your questions.

As requested, we have furnished to your Subcommittee a draft of our report entitled, "Progress of Federal Procurement Reform Under Executive Order 12352." The limited response by the Federal agencies to the order so far reinforces the need for more legislative backing of procurement reform. We believe, therefore, that OFPP's evolving role of procurement system leadership and assistance should be formally recognized in statute. Formalizing this role could include authority to prescribe criteria which individual agency systems must meet to be considered acceptable. Such criteria would cover the essential elements of a procurement system--the procurement process, work force development, the use of competition, and management controls over the procurement system. The system criteria and any desired performance characteristics would be developed with full agency participation.

Our suggestion is very close to the Administration's proposal last year for a Uniform Federal Procurement System. The difference is that OFPP would have the authority to prescribe such criteria rather than simply be a coordinating body.

We will be glad to furnish any additional information you may need in this matter.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

Enclosure

QUESTIONS AND ANSWERS ON REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

(1) Should OFPP be reauthorized? If so, for how many years? Should OFPP be a permanent office?

Yes, OFPP should be reauthorized. OFPP has embarked on a long-term development and implementation program as a result of Executive Order 12352 to upgrade agency procurement and management systems. The current efforts under the program will extend well beyond the sunset date for OFPP (September 30, 1983) and implementation will take years before reforms begin to take effect. Agencies need to understand that the Congress supports procurement reform and is serious about this long-term effort. GAO agrees with the 5-year extension proposed in Senate Bill S.1001. A shorter period of 3 years, for example, would put OFPP in a defensive position in dealing with the agencies and would divert time and attention away from its principal objective of attaining the needed procurement reforms. At the end of the 5-years, the Congress should evaluate the progress of procurement reform implementation and decide whether OFPP should be permanent.

(2) OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures, and forms relating to procurement. (Public Law 93-400). As a result of the 1979 amendments to the OFPP Act, OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by OFPP (Public Law 96-83).

With the reauthorization of OFPP before the Congress, the extent of its authority is again an issue.

(A) Should OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

OFPP's present authority is insufficient if it is to have a leadership role in the Federal procurement reform effort. Executive Order 12352 placed OFPP in a leadership role, but it has not performed in such a capacity. OFPP's role is more of a catalyst and guide rather than of a decisionmaker. Decisions and conflict resolution are done elsewhere. Examples are the several procurement issues that were elevated to the Cabinet Council on Management and Administration and the use of the Paperwork Reduction Act authority to resolve the Federal Acquisition Regulation (FAR) implementation issues.

This is to be expected since the wording in the Executive order did not establish a strong implementing mechanism and OFPP's legislative authority is so weak the lack of authority raises serious questions about the results that can be achieved by the Executive order. Our review of progress under the order found a real need for a decisionmaker to facilitate reform. There are 45 independent agencies and 4 regulatory authorities working towards the goal of procurement reform. Conflicts are bound to arise. Such conflicts are not always of sufficient importance to go to the Cabinet Council on Management and Administration, but they must be resolved nevertheless if progress is to be made.

(B) Should OFPP have regulatory authority, as orginally provided in the OFPP Act of 1974? If so, what specific role should OFPP serve in issuing regulations?

The extent of regulatory authority should vary with the amount of control needed to effectively operate the Federal procurement system. At the moment, there is a need for leadership in the development and maintenance of the new FAR. The present Memorandum of Agreement between the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration does not provide for an overall decisionmaker. After FAR takes effect, maintenance will be a problem because the regulatory councils--civil and defense--are independent. Although these councils can appeal disputes to an FAR council, it is clear from an August 1982 agreement reached between the regulatory agencies that the FAR council "will not have directive authority." We hope this clarifies the situation because during the Subcommittee's recent hearing the Administration's testimony was confusing on this point. Issues can be elevated to respective agency heads for resolution. However, this could result in a proliferation of supplemental procurement regulations which are individually maintained. To assure the regulatory process can support a FAR system, OFPP should have authority over developing and maintaining as well as supplementing regulations.

(C) Should OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving

> the waiver of statutory small purchase procedures and socio-economic thresholds, under case-by-case supervision from the Director of the Office of Management and Budget and the Congress?

GAO believes that OFPP should be given authority to develop innovative procurement concepts and methods which can be tested by selected agencies under controlled conditions with advance notice to the Congress. This authority is much broader than that posed by the question and is not limited to just small purchase procedures and socio-economic thresholds. For example, it could include the use of abbreviated and simplified procedures and contracts to purchase commercial products and services or any other innovation to increase competition. This testing will provide the executive branch and the Congress with the data it needs to make informed decisions on changes in procurement statutes.

(D) Are there other authorities which you feel OFPP should have?

In addition to the added authority already noted--overseeing Government-wide regulations--OFPP should have its evolving role of procurement system leadership and assistance recognized in statute and be given the authority to prescribe acceptable Government-wide criteria and standards for procurement system performance. As part of Executive Order 12352, an interagency task group was established to develop procurement system performance criteria. Once criteria is available, executive agencies are to adapt this criteria to their operations and specify a level of performance. Examples of these in the area of competition can be found in the Administration's proposal for a Uniform Federal Procurement System, page 31. By setting criteria and performance standards, OFPP can insure that improvements are made.

(3) Should the Congress codify agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982? Should the directive to obtain more effective competition be expanded?

Prescribing agency management responsibilities for procurement systems in legislation will add weight to the Executive order and improve Federal agencies' response. Important elements of the order are (1) the establishment of clear lines of contracting authority and accountability, (2) designation of a procurement executive responsible for managing each agency's system, (3) development of a professional work force, and (4) establishment of a program for increasing competition. The need for these elements was recognized by the Commission on Government Procurement in the early 1970's and they are key features of OFPP's proposed Uniform Procurement System. GAO supports the reforms noted in the order and believes that their inclusion in OFPP's reauthorization would eliminate uncertainty in agency relationships with OFPP and facilitate procurement reform.

For example, agencies with significant procurement activities have recently designated their procurement executives, which is in compliance with the order. However, most agencies have failed to clearly define this executive's new responsibilities or provide the authority to do the job. In addition, procurement executives have not redelegated certain responsibilities down to the operating level, where the changes must be made to be effective. A statement of the requirement in statutory terms would provide additional impetus for agency action.

Because the Executive order is so brief on the matter of competition, we believe it would be useful to expand statutory management responsibilities in this area. We have so testified before the House Committee on Government Operations, citing such examples as procurement planning, market research, limiting the circumstances permitting sole-source procurement, and assigning overall agency responsibility for removing barriers to competition. Your Subcommittee has been provided copies of our testimony to the House, as well as some bill language to accomplish this aim.

(4) Has OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Despite the many obstacles facing OFPP, it has been effective in developing a new procurement system concept and in getting some executive branch support. Executive Order 12352 marks the first time a President has intervened directly to support the reform movement started by the Congress in the early 1970s. However, it is difficult to fully measure OFPP's effectiveness until more data is available on the success of the current reforms.

AMERICAN BAR ASSOCIATION

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April 12, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to respond to your letter of April 7, 1983 regarding the reauthorization of the Office of Federal Procurement Policy.

Enclosed are ABA's responses to the questions contained in your letter and comments on other issues that you may wish to consider in connection with the reauthorization of OFPP.

If you have any questions regarding the ABA responses or comments, or would like additional information, please let me know.

Sincerely,

Robert D. Evans

Robert D. Evans

RDE:dcm

Enclosures

cc: R.D. Wallick
O.S. Hiestand

Responses To Questions In Senator Cohen's Letter Of April 7, 1983

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   A. Yes. The American Bar Association (ABA) recommends a five year extension.

   The ABA endorsed the establishment of OFPP in 1974 and its reauthorization in 1979. The importance of and need for OFPP are as great now as they were when this Office was first created. While OFPP has been a leader in and motivating force for improving the federal procurement process, there is much to be done. Continued, centralized leadership by OFPP is essential if the momentum toward improved procurement is to continue.

   The functions OFPP is intended to serve will be important and needed indefinitely. Federal procurement is vast, diverse, complex and changing. The Congress, the Executive Branch, and those who do contract business with the government need an objective, independent organization like OFPP to serve as a focal point for determining procurement policies. Whether the Office should be separated from OMB or its functions performed through a different organization are matters that may need to be considered sometime in the future. For the present, however, it should be sufficient to extend the Office for five years in order to provide adequate continuity in finalizing the Federal Acquisition Regulation (FAR), monitoring its implementation, and making changes to accommodate new procurement techniques and statutory requirements.

2.A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   See answer to 2.B., below.

2.B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

   A. The ABA strongly endorses restoring to OFPP the "regulatory" authority originally provided in the OFPP Act of 1974. The very nature and purpose of an

OFPP dictates that it have directive authority with respect to procurement policies, regulations, procedures, and forms utilized by contracting agencies. This does not mean that every agency and every contract must conform to a uniform requirement. Just as the Congress should provide adequate flexibility to the Executive Branch in how procurement is conducted, so OFPP must prescribe policies and regulations in a manner that accommodates legitimate differences in types of products and services required or available to meet the agencies' needs.

It is important to distinguish between "regulatory authority" with respect to OFPP and what is usually referred to as a "regulatory agency." The latter basically regulates the conduct of private activities by individual citizens and business entities. OFPP regulates only in the sense that it prescribes (or participates in) the policies and regulations governing how the federal contracting agencies conduct procurement. In other words, procurement regulations establish controls on how government agencies can exercise their authority to spend public funds for goods and services. They do not prescribe government control over individual citizens or business entities. The private sector is free to decline to do contract business with the government or to condition the terms on which it will contract with the government. To attract suppliers and increase competition, therefore, procurement regulations need to be as simple and uniform as possible, and fair. Voluminous, conflicting, unnecessary, and sometimes ambiguous procurement regulations discourage competition, create disputes, and increase costs. Thus, procurement policies, regulations, procedures and forms should be scrutinized and controlled by a body that is independent of the agencies who enter into contracts.

2.C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

A. The government's needs for goods and services, as well as the marketplaces and methods of competition, are continually changing. Procurement is a dynamic process which is evolving and which requires adaptation of procurement methods as experience, requirements, and market forces change. Procurement should not be looked on as an end in itself, but as the means to enable the agencies to perform their functions. To promote good procurement, Congress should prescribe by statute fundamental procurement policies which can be implemented by policies and regulations consistent with the statutory framework. To the extent this principle is observed, the need to also authorize testing of "innovative procurement techniques" should not be necessary. Existing restrictions on procurement such as socio-economic thresholds and set aside programs, do not involve procurement techniques; they are special restrictions on the use of contracting authority and serve non-procurement purposes. While it may serve a useful purpose to permit exceptions to such requirements in order to evaluate the impact they have on competition and costs, the better approach may be to utilize other means to accomplish the purposes involved and free-up the procurement process to better achieve its purposes.

The proposed testing authority for OFPP has not been well described, nor any assessment made of its impact on existing and potential contractors or the procurement process in general. The controls over use of this authority are not subject to any objective standards, including length of tests, or provide an opportunity for the contracting community to participate in the decision making process, or to challenge decisions. As presently structured, exercise of such authority could become a political football. More importantly, granting such authority should not be considered a substitute for, or reason to postpone, action to modernize the statutory framework for procurement.

Subject to these caveats, permitting OFPP to test different approaches to the acquisition of commercial products, payment and inspection procedures, and warranties, for example, would provide data on which to base new procurement policies and regulations and, where appropriate, changes in statutory requirements.

2.D. Are there other authorities which you feel the OFPP should have?

A. The role and functions originally prescribed for OFPP encompassed the entire procurement process. If restored, the OFPP should have sufficient authority to make or cause to be made needed improvements in the federal procurement process. Areas which need special attention are property management, warehousing by Executive agencies, and more reliance on commercial products. However, these are adjuncts of procurement and appear to come within the directive authority OFPP had (and should have) to prescribe procurement policies and regulations.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

   A. Yes. Although the Executive Order has the force and effect of law, the principles it enunciates with respect to agency procurement management responsibilities are basic to sound procurement. As such, they should be included in the statutory framework governing the procurement process.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   A. The answer to this question depends on what is intended by "effectively." Within the restraints imposed by the 1979 reauthorization Act, OFPP has done a remarkable job in keeping the FAR project alive, in getting Executive Order 12352 issued, and in maintaining discussions and explorations of sound procurement policies. The elimination of OFPP's directive authority, and subjecting the actions of the Administrator to concurrence of the Director of OMB, however, have downgraded the stature of the Office, both inside and outside the government. The assignment of responsibility for issuing procurement regulations to the DOD, GSA, and NASA by the Executive Order has diffused OFPP's role as the "focal" point for procurement policies and regulations. In effect, it puts the contracting agencies back in charge of deciding the policies and prescribing the regulations, procedures, and forms for procurement contracts. As a result, there is a growing perception outside the government that OFPP is not worth bothering with. Also, the assignment of procurement regulation responsibility to the DOD, NASA and GSA has generated a feeling amont some in other agencies that they are considered second class when it comes to procurement matters. Neither is conducive to fostering the kind of relationship and objectivity needed to improve the procurement process.

Other Issues And Comments

1. Participating In The Development Of Procurement Policies, Regulations, Procedures and Forms.

At present the establishment of procurement policies, regulations, procedures and forms is exempt from the requirements of the Administrative Procedure Act (APA). Although OFPP and the agencies generally publicize and request comments on procurement policies and regulations, there is no requirement that they do so; and there is no legal right to demand a hearing or challenge such issuances. The ABA believes that procurement policies, regulations, procedures and forms established for government-wide use, as well as special policies, etc. established by an agency, should be promulgated through procedures compatible with those required under the APA. This does not include agency issuances that are intended to implement a government-wide policy or regulation.

2. Use Of Private Sector To Furnish Government Needs For Goods And Services.

Current Executive Branch policy on "contracting out" for goods and services is contained in an OMB Circular (A-76). The reauthorization of OFPP provides an opportunity for Congress to consider whether there should be a statutory policy for reliance on the private sector for goods and services required by the government.

3. Size Of OFPP.

As originally envisioned by the Commission on Government Procurement, and established by the Congress, OFPP was to be a relatively small office composed of experienced, highly qualified procurement professionals. Most of the resources for its work would be accomplished through assignments to the contracting agencies or qualified persons within those agencies. This concept is still valid, but needs consideration of what should be the optimum size of OFPP to carry out its responsibilities. In addition, the contracting agencies must be able and willing to devote resources as called upon. To assure adequate professionalism on the OFPP staff, the Office must have the stature to attract highly qualified people and the Administrator should be able to request contract professionals from the contracting agencies for particular assignments. In other words, the contracting agencies should be regarded as the principal training grounds for the professional personnel at OFPP.

4. Position Level of OFPP Administrator.

At present the Administrator of OFPP is a Level IV position in the Executive Schedule. In view of the broad responsibilities of the Administrator, and the oversight functions of the Office, Congress may want to consider making the Administrator position a Level III in the Executive Schedule.

NATIONAL ACADEMY
OF PUBLIC ADMINISTRATION
1120 G Street, N.W., Suite 540, Washington, D.C. 20005
202/347-3190

April 15, 1983

APR 18 '83

Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
  Government Management
506 Carroll Arms
Washington, D.C. 20510

Dear Mr. Chairman:

The Panel on Deregulation of Government Management appreciates your invitation to comment on the reauthorization of the Office of Federal Procurement Policy (OFPP). Our views on this matter are set forth in the Panel's Interim Report on Procurement, just released, and in my testimony before the House Committee on Government Operation on April 7, 1983. I am pleased to enclose copies of these statements, and to respond to your questions.

Question No. 1

As we testified on April 7, 1983, we fully support the Committee's objectives to reauthorize OFPP in such a form that it can continue its strong leadership and direction over the program of reforms which has been instituted. We think that Mr. Sowle is providing very strong leadership and has very strong support from Mr. Wright. We are very much encouraged, and very supportive of what they are doing.

The above views are without prejudice as to whether OFPP is an appropriate longer term organizational vehicle. At the moment, different views have been expressed within our Panel on this point, and we have not concentrated on what organization structure would be most appropriate later on. For this reason we have not taken any position on the length of time for which OFPP should be reauthorized. We are certain that the leadership role of OFPP should continue through the completion of the reform efforts now underway and that this will require several years.

Question No. 2 A and B

We advocate extension of OFPP's statutory authority as specified in the 1979 Reauthorization Act, PL 96-83. We have strongly endorsed the present assign-

Affiliates: National Academy of Public Administration Foundation and National Institute of Public Affairs

ments of regulatory authority to DOD, NASA and GSA. We believe that the role of the Executive Office of the President should not be that of regulation. We believe that it should be a leadership role.

Question No. 2 C

Yes, we strongly advocate the granting of test and demonstration authority to OFPP by Congress — as part of the proposed reauthorization act — broad enough to permit major statutory and regulatory waivers, for extended periods, in whole waivers. Such experimentation and pilot operation of major new concepts is necessary if we are to achieve anything near the true potential of improving the cost and timeliness of federal procurement. It is necessary as a part of laying the groundwork for a second phase of procurement reform. Examples of test areas which might be considered are: small purchases, commercial items, thresholds for socio-economic programs, competition and personnel practices.

Question No. 2 D

Another authority we hope will receive Congressional attention is the delegation to Director of OFPP of authority to examine and adjust thresholds for small purchases, and socio-economic laws, periodically, such as every three years. We recognize that this matter is complex and may be better considered as part of separate legislation.

Question No. 3

We think these provisions of Executive Order 12352 are an excellent specification of the matters which should receive the attention of agency heads.

The Panel's report does not recommend that they be incorporated in statute, since the President's mandate is very clear. Thus we think that this is a matter for Congressional judgment as to whether it is necessary to reemphasize these mandates by statute.

Question No. 4

As stated in our report we feel that a massive and promising reform effort is at long last underway — after ten years of getting ready — and that it is important for all concerned to get behind that effort. Seldom in government has as high a degree of participative management existed as prevails today in the procurement function — with 26 agencies and 131 handpicked experts at work on plans of action to reform the process.

It is apparent that the current efforts cannot be completed by September 30, 1983. Therefore OFPP's role should remain assured and unambiguous by statute, without the type of major disruption and loss of mometum which would grow out of a major change in charter or location.

We deeply appreciate this opportunity to respond to your questions.

Sincerely,

Dwight Ink

Dwight Ink
Chairman
Panel on Deregulation of
Government Management

DI:mw
Enclosure

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1983 MAY -6 AM 10 24

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Vice Chairman Board of Trustees
Chairman, Executive Committee
R.W. Clark
Vice Chairman, Executive Committee
W.H. Robinson, Jr.
President

4 May 1983

The Honorable
William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

MAY 5 '83

Dear Mr. Chairman:

This is in reply to your letter of April 7, 1983 in which you requested responses to a series of questions, as well as comments on related issues, to be considered in your review of the reauthorization of the Office of Federal Procurement Policy (OFPP) for an additional five years.

NSIA is a national organization of more than 300 manufacturing, research and service companies of all sizes and from all segments of industry interested in and related to our nation's security. NSIA serves essentially as a two-way communications medium between government - primarily defense - and the industry which supports it.

In support of our national security interests, NSIA has been actively involved in the efforts to improve the procurement process, including our participation in the Commission on Government Procurement and continuing as a contributor to all subsequent attempts to update the system. Our response to your questions are:

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   Yes. OFPP should be reauthorized. We recommend that the term be five years. This term is desired to assure the continuity needed for effective implementation of the Federal Acquisition Regulation (FAR) system; for consideration of the many issues identified by OFPP in Appendix C of its recommendations for a Uniform Federal Procurement System; and for putting into effect reforms ordered by Executive Order 12352 many of which are now being developed by interagency task groups under OFPP leadership.

2.A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   See answer to 2.B. on page two.

2.B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

The Commission on Government Procurement, in its Recommendation #1 to create OFPP, established four criteria for the new office. OFPP was to:

(a) Be independent of any agency having procurement authority;

(b) Operate on a plane above the procurement agencies and have directive rather than merely advisory authority;

(c) Be responsive to Congress; and

(d) Consist of a small, highly competent cadre of seasoned procurement experts.

These criteria are just as relevant today as they were in 1974, and it is our opinion that the 1979 amendments did reduce the effectiveness of OFPP by diluting its leadership role during the formative period of modernizing the procurement system.

It is our opinion, however, that regulatory authority to the extent originally provided in the 1974 Act is not critical to continuing the OFPP as an effective and necessary office, its leadership position within OMB being sufficient as exemplified by the issuance of Executive Order #12352 on March 17, 1982.

We therefore believe that the OFPP should have the authority to prescribe government-wide policy which would be implemented by procurement regulations issued by those agency heads currently having such authority. The OFPP should also have the authority necessary to resolve inconsistent policy matters resulting from regulations issued by the Federal agencies under existing statutes or government-wide policy. In addition, OFPP should have authority to initiate proposals for new procurement related legislation and the responsibility to coordinate Executive Branch positions on all such legislation.

2.C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Yes, the OFPP should have testing authority. Not only must procuring agencies acquire a broad spectrum of goods and services, ranging from the most mundane to the most exotic, but these requirements are changing more rapidly than ever before. If the mission requirements of the agencies are to be met, procurement procedures must be adaptable to these changing requirements. To achieve this flexibility there must be a legal method of testing innovative procurement techniques. For example, the advancement of the United States in high technology fields must not be hobbled by inflexible procurement practices. Consequently, the OFPP should have testing authority to engage in a wide range of innovative procurement techniques, not limited to the waiver of statutory socio-economic thresholds. Congressional supervision of OFPP directed tests can be accomplished adequately through normal oversight activ

2.D. Are there other authorities which you feel the OFPP should have?

No.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

We are in general agreement with the underlying policies and goals of the first section. It is not essential that these policies be restated in a statute reauthorizing OFPP. However, it would be appropriate to set forth the basic policies which will guide the OFPP in the performance of its functions. Accordingly, we recommend the inclusion of the policy statements attached hereto.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Given the diversity and breadth of Government agencies, the OFPP has been effective in fulfilling its fundamental mandate within the scope of its limited authority. We do not believe that OFPP has had the opportunity and support to achieve its full potential. Not all of the criteria established by the Commission have been present at all times. Nonetheless, the OFPP has vigorously pursued implementation of many of the recommendations issued by the Commission on Government Procurement. The OFPP has provided guidance and leadership to the procurement community at the highest levels of the Executive Branch. Some examples are its efforts to further the professionalism of procurement officials, its efforts to develop the FAR and its efforts to reduce the administrative and legislative burdens placed on the procurement system.

In response to your request for comments on any other issues that should be addressed, the following comments are offered:

The bill should retain the Federal Acquisition Institute (FAI) as an integral part of the OFPP. To achieve the objectives stated in Executive Order 12352 and Recommendation #21 of the Commission on Government Procurement, it is essential that the FAI be responsive to the OFPP. To be effective in developing the training and education necessary in establishing a professional procurement workforce for the total federal government, daily interface between the FAI and the OFPP is required. The FAI's procurement research activities must be responsive to the needs of the OFPP.

We appreciate this opportunity to express our views on this extremely important subject, and would be pleased to further assist you or your staff as you may require.

Sincerely,

Wallace H. Robinson, Jr.

Wallace H. Robinson, Jr.
President

WHR/md

POLICY STATEMENTS FOR S.1001

SEC. It is the policy of the United States that the Federal Government shall rely on the private sector and on competitive procurement practices to supply needed property and services, and that the system for procurement of property and services by the Federal Government shall--

(1) promote full and open competition;

(2) acquire needed property and services from the private sector whenever practicable;

(3) establish policies, procedures, and practices which will provide the Government property and services of the requisite quality, within the time needed, at the lowest reasonable cost;

(4) promote the development of simplified uniform procurement processes;

(5) promote the participation of small business concerns;

(6) support the continuing development of a competent professional procurement work force;

(7) eliminate duplication of procurement activities and redundant requirements placed on contractor and Federal procurement officials;

(8) promote fair dealings and equitable relationships with the private sector;

(9) consider private sector views in the development of procurement policies and regulations;

(10) ensure payment is made in a timely manner and only for value received;

(11) require the description of needs, whenever feasible, in terms of functions to be performed or performance required;

(12) establish a preference for the use of commercial products and services procured with commercial terms and conditions whenever practicable;

(13) ensure the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements;

(14) otherwise promote procurement efficiency, effectiveness, and economy within the Government and for those who do business with the Government.

Aerospace Industries Association of America, Inc.

Office of the President

April 25, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
  Government Management
Committee on Governmental Affairs
United States Senate
346 Dirksen Senate Office Building
Washington, D. C. 20510

APR 29 '83

Dear Mr. Chairman:

This is in response to your letter of April 17, 1983 posing certain questions with respect to the reauthorization of the Office of Federal Procurement Policy (OFPP). The opportunity to express our views on this important topic is appreciated.

Our responses, keyed to your inquiries, are as follows:

1. Yes - but for at least five years, particularly because of the need for effective implementation of Executive Order 12352 and the significant effort required to implement the Federal Acquisition Regulation.

2. A. No - but see response to 2.B.

   B. No - at most it should have regulatory powers limited to the resolution of differences of interpretation among the implementing agencies.

   C. Yes - but the OFPP should be required only to inform Congress of such actions.

   D. No - but see response to 2.B.

3. No - the definition and assignment of responsibilities in a continuing effort to improve the procurement process should remain with executive management.

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4. Yes - within the constraints of authority and the diversity of missions of the Federal agencies, OFPP has operated effectively in a number of areas; for example:

   a) OFPP has represented the procurement community in the Councils of the Office of Management and Budget and the White House where technical expertise otherwise would have been missing.

   b) OFPP has ably represented government procurement personnel in efforts to upgrade standards of education and training, and has defended against efforts to reduce the standards by which procurement personnel are measured.

   c) OFPP has established a viable working program involving the agencies in the implementation of the President's Executive Order 12352 on "Federal Procurement Reform."

   d) OFPP has actively pressed for implementation of programs and issues which reflect the importance of the free enterprise system: i.e., the policy of supplying the goods and services for the government from the private sector; a government-wide patent policy; an improved pay policy; fewer or at least improved regulations; reduced administrative burdens on industry; improved legislation dealing with liability and indemnification issues; and improved decisionmaking and controls in the systems acquisition process.

   As to other issues: The Federal Acquisition Institute should remain in OFPP to assure necessary diversity of programs and staff to attain its objectives.

We shall be pleased to furnish any further input on this matter that you may deem helpful.

Yours very truly,

Karl G. Harr, Jr.

Electronic Industries Association

Peter F. McCloskey
President

1983 [illegible] PM 12: 37

May 12, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
  Of Government Management
Committee on Governmental Affairs
United States Senate
Dirksen Senate Office Building, Room 1251
Washington, DC 20510

MAY 16 '83

Dear Mr. Chairman:

The Electronic Industries Association (EIA) is pleased to respond to the questions in your letter of April 7, 1983 concerning the reauthorization of the Office of Federal Procurement Policy (OFPP). Many of our 400 member companies are engaged in providing products and services to the Federal government, and it is on their behalf that we offer the following responses to your questions:

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

We firmly believe that the OFPP should be reauthorized for a term of at least five years. Such a term is necessary: to ensure the continuity needed for effective implementation of the Federal Acquisition Regulation (FAR) system; for consideration of the many issues identified by OFPP in Appendix C of its recommendations for a Uniform Federal Procurement System; and, for putting into effect reforms ordered by Executive Order 12352, many of which are now being developed by interagency task groups under OFPP's leadership.

2.A Should the OFPP's present authority, as provided in the 1970 amendments to the OFPP Act, be extended?

See the answer to 2.B.

2.B Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

We do not believe that regulatory authority to the extent originally provided in the 1974 Act is critical to continuing the OFPP as an effective and necessary office -- OFPP's position of leadership within OMB has been sufficiently exemplified by the issuance of Executive Order 12352 on March 17, 1982.

We believe, however, that OFPP must have the authority to issue government-wide policy which would be implemented by procurement regulations issued by those agency heads currently having such authority. The OFPP should also

(more)

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have the authority necessary to resolve inconsistent policy matters resulting from the regulations issued by the Federal agencies under existing statutes or government-wide policy. In addition, OFPP should have authority to initiate proposals for new procurement related legislation and the responsibility to coordinate Executive Branch positions on all such legislation. We also believe that the regulations issued by the procuring agencies must be subject to review by OFPP to ensure that the regulations issued by those agencies conform to OFPP policies.

We do not believe that it is necessary for OFPP policy issuances to be approved by the Office of Management and Budget. The normal responsibilities of the Executive Office of the President provide sufficient authority without requiring advance approval of procurement pronouncements.

2.C Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

We support the concept that OFPP should have authority to engage in innovative procurement techniques on a test basis. The requirements for procuring agencies to acquire goods are changing more rapidly than ever before. To achieve the mission requirements of the procuring agencies, procurement procedures must be adaptable to these changing requirements. In order to achieve this flexibility, there must be a legal method of testing innovative procurement techniques. It is essential that the advancement of the United States in high technology fields must not be obstructed by inflexible procurement practices. Consequently, OFPP should have testing authority to engage in a wide range of innovative procurement techniques, not limited to the waiver of statutory socio-economic thresholds.

We do not believe, however, that it is necessary to establish a statute which requires that OFPP is specifically responsible to both the OMB and the Congress. That requirement, in so far as the OMB is concerned, is implicit as a result of the organizational placement of OFPP within the Executive Branch. Congressional supervision of OFPP directed tests can be accomplished adequately through oversight activities.

2.D Are there other authorities which you feel the OFPP should have?

There are no other statutory authorities believed necessary for OFPP to perform its function satisfactorily.

3. Should Congress prescribe management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

We do not believe that it is essential for any legislation reauthorizing the OFPP to prescribe the agency management responsibilities as set forth in the first section of EO 12352. However, we do endorse the attached basic policies which will guide OFPP in the performance of its functions, and respectfully recommend their inclusion in such legislation.

(more)

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Given the diversity and breadth of Government agencies, the OFPP has been effective in fulfilling its fundamental mandate within the scope of its limited authority. We do not believe, however, that OFPP has had the opportunity and support to achieve its full potential. Nonetheless, the OFPP has vigorously pursued implementation of many of the recommendations issued by the Commission on Government Procurement in 1974. Towards this goal, OFPP has provided guidance and leadership to the procurement community at the highest levels of the Executive Branch. Some examples of its leadership are its efforts to further the professionalism of procurement officials, its efforts to develop the FAR and its efforts to reduce the administrative and legislative burdens placed on the procurement system.

We have no further comments to offer at this time. We believe the reauthorization of the OFPP should be acted upon as soon as possible to ensure the continuity of leadership in procurement activities within the Executive Branch.

We appreciate this opportunity to express our views on this extremely important subject, and hope our thoughts and recommendations will assist you in the legislative process. We would be pleased to further assist you or your staff as you may require.

Sincerely,

Peter McClosky

POLICY STATEMENTS FOR S.1001

SEC It is the policy of the United States that the Federal Government shall rely on the private sector and on competitive procurement practices to supply needed property and services, and that the system for procurement of property and services of the Federal Government shall:

(1) promote full and open competition;

(2) acquire needed property and services from the private sector whenever practicable;

(3) establish policies, procedures and practices which will provide the Government property and services of the requisite quality, within the time needed, at the lowest reasonable cost;

(4) promote the development of simplified uniform procurement processes;

(5) promote the participation of small business concerns;

(6) support the continuing development of a competent professional procurement work force;

(7) eliminate duplication of procurement activities and redundant requirements placed on contractor and Federal procurement officials;

(8) promote fair dealings and equitable relationships with the private sector;

(9) consider private sector views in the development of procurement policies and regulations;

(10) ensure payment is made in a timely manner and only for value received;

(11) require the description of needs, whenever feasible, in terms of functions to be performed or performance required;

(12) establish a preference for the use of commercial products and services procured with commercial terms and conditions whenever practicable;

(13) ensure the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements;

(14) otherwise promote procurement efficiency, effectiveness and economy within the Government and for those who do business with the Government.

CBEMA

April 26, 1983

The Honorable William S. Cohen
Chairman,
Senate Subcommittee on Oversight of
  Government Management
346 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

The Computer and Business Equipment Manufacturers Association (CBEMA) appreciates the opportunity to respond to your questions on the reauthorization of the Office of Federal Procurement Policy (OFPP). CBEMA has consistently supported a strong centralized OFPP and has said so in testimony before the Senate Subcommittee on Federal Spending Practices and Open Government on March 9, 1979 during hearings on the reauthorization of OFPP. Additionally, we provided comments on the OFPP proposal for Uniform Federal Procurement System (UFPS) submitted to Congress on December 9, 1981.

The following are our responses to your specific questions:

1. Yes, OFPP should be reauthorized for a minimum of five years. This is the same amount of time we recommended in our March 1979 statement before the Federal Spending Practices and Open Government Subcommittee. We strongly believe that five years is necessary in order to institutionalize any changes in the federal procurement process.

2. (A&B) In order to effect change in the procurement process, there is a need for OFPP to possess decision making authority as opposed to the mere ability to reach consensus with other procurement entities. One such example is using this authority to recommend a single federal procurement statute or a dual statute. CBEMA supported the concept of a single federal procurement statute during the 1979 Senate hearings.

   (C) We do not see the need for special authority to test new procurement concepts and procedures. The 1974 language is sufficient in this regard. However, we do encourage more study in the socio-economic area of procurement to minimize some of the burdens born by the procurement process because of some of these policies.

Computer and Business Equipment Manufacturers Association   311 First Street, N.W., Suite 500, Washington, D.C. 20001   (202) 737-8888

In 1979 in a letter to the Honorable Jack Brooks, Chairman, House Government Operations Committee, we stated:

> "Comment has been made concerning the lack of research and development on the part of OFPP. We agree that there needs to be, within the current acquisition process, adequate market research about the industries and products with which contracting officers are dealing. We support the recent efforts by OFPP directed toward requiring agencies to do a more effective job of surveying the various products, distribution systems, and other factors of different industries before determining which will be the most cost-effective acquisition technique for the Government on a specific class of items. In future activities, OFPP should be encouraged to increase their effort in market research and to utilize the results of this research in the drafting of policy and regulations, and in the training of contracting officers. We feel that this will help preclude the abuses, or perceived abuses, which have been so widely publicized over the last few months.
>
> An area which we feel is critical to our industry and to the health of the country is the need for OFPP to recognize in its R&D, in its training efforts, and in its general management functions, the need to create incentives for the inspiration and introduction of innovative new technology into Government. We hope that his will be an initiative which OFPP will undertake and which will separate itself in technique, concern and activity from many of the mature and stable activities and products for which OFPP is responsible. We support the efforts of OFPP to keep Government current and an active partner, through its acquisition activities, in the promotion of American industry."

We continue to believe this to be especially true today. In view of the accelerating pace of high technology, especially in office automation and the spread and usage of personal computers, it is imperative that OFPP consider these technological developments when formulating procurement policy.

(D) OFPP should have any other authorities necessary for the smooth operation of its mission.

3. We support the types of principles set forth in Executive Order 12352 irrespective of the source, whether it is Congressional or Administrative.

4. We feel that OFPP has not had complete and unequivocal support within the Executive Branch for the level of authority needed to direct the Federal procurement process; for example, the ability to: (1) propose a single statute uniform procurement system, (2) implement a single set of Federal Acquisition Regulations, and (3) maintain time frames in getting out the FAR's. Without this authority the management of Federal procurement policy remains one of management by committee as opposed to a strong procurement office.

In addition to providing answers to your specific questions, we would like to take this opportunity to reiterate our position on the Federal Acquisition Institute. We feel that the FAI should remain a part of OFPP. In our statement to Chairman Brooks in May 1979 we stated:

> "The Federal Acquisition Insititute is a much needed organization which will bring to bear the multitude of training activities, facilities and knowledge within the Federal establishment. We are concerned, however, that the concentration on Federal regulations and policy solely, does not prepare many of the contracting officers to handle procurements for which assignments are made. In short, many of these contracting officers are not trained in the technologies and products which they procure and, therefore, cannot be as effective as they ought to be in assuring that the overall best interests of the Government are being served when they conduct procurements. We hope that, in the future, OFPP can work to alleviate this problem."

We appreciate this opportunity to express our views on the reauthorization of OFPP and we stand ready to assist you in making OFPP the strong and effective procurement authority which we believe was originally envisioned by the 1972 Committee on Government Procurement and the Congress in 1974 when it passed the original legislation creating the OFPP. Although only limited progress has been made to date, OFPP can become an effective body given an effective charter from the Congress. If we can be of additional assistance in providing views or working with you, please feel free to call upon us.

Very truly yours,

Vico E. Henriques
President

VEH/gk

National Council of NCTSI *Technical Service Industries*
INTERNATIONAL SQUARE • 1850 K STREET N.W. SUITE 1150 WASHINGTON D C 20006 • (202) 861-0200

APR 14 PM 2 58

April 13, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

APR 14 '83

Dear Senator Cohen:

I appreciated receiving your letter of April 7, 1983 respecting the reauthorization of the Office of Federal Procurement Policy (OFPP). The National Council of Technical Service Industries (NCTSI) believes it is important that the reauthorization of OFPP be carefully examined so that the enabling legislation provides adequate authority and direction to achieve the desired goals.

In answer to the questions in your letter:

1. OFPP should be reauthorized, if it is provided the authority to achieve affective implementation of procurement policy. The length of time reauthorized should reflect the amount of authority provided and any specific tasks or goals required. Four years should be adequate, unless there is some extenuating reason.
2. A. OFPP's authority should be strengthened rather than merely extended.

   B. Yes, OFPP should be again given regulatory authority.

   C. Yes, there is much room for inovative procurement practices, and controlled testing is needed.

   D. Yes, OFPP should be given authority to require compliance with Federal Procurement Policy, Regulations, and OMB Circulars on procurement and acquisition.
3. Yes, providing legislative authority to support the Executive Order will give permanence to these procurement reforms and show the interest of the Congress in these goals.

4. No. The implementation of OMB Circular A-76 has been very poor except in the Department of Defense (DOD), where less than 5% of possible cost comparisons have been conducted. Since appreciable savings result (averaging 20%) from the in-house personnel reductions even when no contract is let, it is in the taxpayers interest to conduct cost comparisons as rapidly as feasible.

On other issues, the greatest shortcoming in the current Federal Procurement system is the lack of adequate contract administrators. There are too few, too poorly prepared and with inadequate grade structure. Considering the amount of money spent by the Federal government annually for procurement, $160 billion, this function should be given greatly increased attention. OFPP should be required to monitor and report on the status of Contract Administrators. The largest amount of procurement, in DOD, may expand several fold in an emergency or war. Readiness in National Security includes integrating the industrial strength of the country into our military effort. Contracting is the means by which this is accomplished. Contract Administrators are already understaffed at the current level of procurement.

I would appreciate the opportunity to testify on behalf of industry at your hearing on April 27, 1983. A list of the member companies of NCTSI is attached. Additionally, I am on the steering committee of the Business Alliance on Government Competition and would like to be accompanied by Mr. William Russell, Vice President of RCA Service Company and Chairman of the Business Alliance Steering Committee. We will also represent the Committee on Contracting Out (COCO), a coalition of 22 associations concerned about federal procurement practices (membership list attached).

Sincerely,

George A. Daoust, Jr.
Executive Director

CORPORATIONS CURRENTLY MEMBERS OF THE NATIONAL COUNCIL OF TECHNICAL SERVICE INDUSTRIES

BDM INTERNATIONAL/BDM MANAGEMENT SERVICES

BOEING COMPUTER SERVICES COMPANY

BOEING SERVICES INTERNATIONAL, INC.

BURNS & ROE SERVICES CORPORATION

CALCULON CORPORATION

CERBERONICS, INC.

CHEMFIX TECHNOLOGIES, INC.

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A Subsidiary of International Telephone and Telegraph Corporation

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LOCKHEED CORPORATION

NORTHROP SERVICES, INC.

NORTHROP WORLDWIDE SERVICES, INC.

PLANNING RESEARCH CORPORATION

RAYTHEON SERVICE COMPANY
A Subsidiary of Raytheon Corporation

RCA SERVICE COMPANY
A Division of RCA

RURAL METRO FIRE, INC.

UNITED INFORMATION SERVICES, INC.

VINNELL CORPORATION

February, 1

COMMITTEE ON CONTRACTING OUT (COCO)

1901 NORTH MOORE STREET
ARLINGTON, VIRGINIA 22209
(703) 558-4315

MARCH 1983

SUBSCRIBING ASSOCIATIONS

- AEROSPACE INDUSTRIES ASSOCIATION
- * AMERICAN CONSULTING ENGINEERS COUNCIL
- AMERICAN DEFENSE PREPAREDNESS ASSOCIATION
- * AMERICAN ELECTRONICS ASSOCIATION
- ASSOCIATED GENERAL CONTRACTORS OF AMERICA
- * ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS
- * BUILDING SERVICE CONTRACTORS ASSOCIATION INTERNATIONAL
- * CONFERENCE OF AMERICAN SMALL BUSINESS ORGANIZATIONS
- COUNCIL OF NATIONAL SECURITY COMPANIES, INC.
- ELECTRONIC INDUSTRIES ASSOCIATION
- HELICOPTER ASSOCIATION OF AMERICA
- INFORMATION INDUSTRY ASSOCIATION
- * LEGISLATIVE COUNCIL FOR PHOTOGRAMMETRY
- MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE U.S., INC.
- * NATIONAL ASSOCIATION OF SERVICE INDUSTRIES
- * NATIONAL AUDIO-VISUAL ASSOCIATION, INC.
- NATIONAL COUNCIL OF TECHNICAL SERVICE INDUSTRIES
- NATIONAL SECURITY INDUSTRIAL ASSOCIATION
- * NATIONAL SMALL BUSINESS ASSOCIATION/ NATIONAL SMALL BUSINESS LEGISLATIVE COUNCIL
- NATIONAL TOOL & DIE ASSOCIATION
- * NATIONAL UTILITY CONTRACTORS ASSOCIATION
- * PRINTING INDUSTRIES OF AMERICA, INC.
- * PRIVATE SECTOR FIRE ASSOCIATION
- * PROFESSIONAL SERVICES COUNCIL
- * TEXTILE RENTAL SERVICES ASSOCIATION OF AMERICA

* exclusively or predominantly small business interests

COFPAES
COMMITTEE ON FEDERAL PROCUREMENT OF ARCHITECTURAL/ENGINEERING SERVICES

American Congress on Surveying & Mapping
American Consulting Engineers Council
American Institute of Architects
American Society of Civil Engineers
ARTBA Planning & Design Division
National Society of Professional Engineers

1983 APR 19 AM 10:47

April 18, 1983

APR 19 '83

Honorable William S. Cohen
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

RE: Office of Federal Procurement Policy

Dear Mr. Chairman:

We appreciate the opportunity to respond to the questions set forth in your April 7 letter concerning the reauthorization of the Office of Federal Procurement Policy. For ease of reference each question is restated followed by our answer.

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   Answer: The Committee on Federal Procurement of Architectural/Engineering Services supports reauthorization of the Office of Federal Procurement Policy. We believe it is useful to have a single, responsible point of contact within the Executive Branch on procurement policy. While we have not always agreed with OFPP actions, either under this Administration or in prior ones, the architectural, engineering and land surveying organizations represented by COFPAES have always found OFPP Administrators and staff to be accessible and, for the most part, responsive to our concerns. We believe the reauthorization should be for a period of three years. This would assure maximum responsiveness to Congressional mandates.

2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthor- of the OFPP before Congress, the extent of its authority is again an issue.

A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

Answer: We believe it is sufficient for the OFPP to provide policy guidance. There are capable staffs within the procuring agencies that should continue to collaborate with each other, under OFPP guidance, to develop uniform regulations to implement policy directives.

B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

Answer: This should be unnecessary so long as policy authority is vested within OFPP.

C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Answer: We think it is appropriate for OFPP to test innovative procurement techniques so long as such tests are "in accordance with applicable laws." For example, it would be inappropriate for OFPP to "test" competitive bidding for the procurement of professional architect/engineer services inasmuch as Congress, through the enactment of the Brooks Act (P.L. 92-582) and the Military Construction Codification Act (P.L. 97-214), has determined that competitive bidding is an inappropriate process for selecting design services for Federal work.

D. Are there other authorities which you feel the OFPP should have?

Answer: No.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Answer: We see no harm in this provided the authorities of government officials with program management responsibility are not diminished in the process of underscoring the importance of procurement officials. Primary responsibility for selection of design professionals should be vested with government officials experienced in construction rather than with procurement officials.

Page three
Honorable William S. Cohen
April 18, 1983

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   Answer: Yes.

5. Please comment on other issues that should be considered in reauthorizing OFPP.

   Answer: We suggest that all policy, not just "major," matters be submitted to Congressional Oversight Committees for review. Our organizations might consider a proposed policy action to be "major" and OFPP might disagree. In such a case the policy could be implemented without our knowledge or an opportunity to explain to interested Congressional Committees why the policy is unwise.

   Our concern is more than hypothetical. On January 18, 1982, OFPP issued a Memorandum to Executive Agencies indicating that the Brooks Act, P.L. 92-582, applied only to construction related A/E services. Subsequently, after pointing out that this policy had not been submitted to Congressional Committees as required by 41 USC 407(b), the OFPP published a notice in the Federal Register to the effect that it was reconsidering the matter. Recently, we met with OFPP Administrator Don Sowle and were assured that a clarification of the January 18, 1982 Memorandum would be issued soon. While we appreciate the responsiveness of OFPP to our concerns, we think that such situations could be avoided by continuing the 30 day Congressional notification requirement on "any policy" as presently set forth in 41 USC 407.

We appreciate the opportunity to provide these comments and ask that they be included in the hearing record on S. 1001.

Sincerely yours,

William R. Ratliff

William R. Ratliff
Chairman

WRC:bc

Please reply to: 475 L'Enfant Plaza, S. W.
Suite 2450
Washington, D. C. 20024

NAW
NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS
... the national voice of wholesale distribution
1725 K Street, N.W.
Washington, D.C. 20006
202/872-0885

John H. Fitch, Jr.
Vice President -
Government Relations

1983 APR 12 AM 9:47

April 11, 1983

The Honorable William S. Cohen
United States Senate
530 Senate Hart Building
Washington, D.C. 20510

APR 1 '83

Dear Senator Cohen:

This is in response to your letter requesting the views of the National Association of Wholesaler-Distributors on legislation to reauthorized the Office of Federal Procurement Policy for five years.

In that regard, I have responded specifically to the questions presented by your letter and hope they will assist in your deliberations on the issue.

1. Question: Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   Response: NAW strongly supports the reauthorization of OFPP. As for the number of years of the reauthorization, NAW has no specific recommendation.

   We believe that as long as standardization, uniformity and simplification of the Federal procurement system is a primary objective, OFPP should remain the central controlling body. However, that is not to say periodic legislative oversight in the form of reauthorization legislation is not useful.

2. Questions A: Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   Response: Yes.

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Second Vice Chairman
Carson, California

Louis H.T. Dehmlow
Secretary
Chicago, Illinois

Question B: Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

Response: Definitely. An agency without regulatory authority and the ability to enforce it Government-wide is ineffective.

If reduction of the complexity, paperwork, and administrative costs of participating in the procurement process (particularly for small business) is to become a reality, OFPP must be given the statutory authority to act.

Question C: Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Response: Absolutely. Without the authority to explore methods to accomplish the above stated objectives in a cost effective method to both the Government and the suppliers, OFPP will not have the ability to initiate reforms, only to react. If the procurement system is to become responsive to a constantly changing economic environment, it must have the flexibility to adapt to those changes.

Question D: Are there other authorities which you feel the OFPP should have?

Response: Yes. NAW believes OFPP, as an arm of OMB, should have the authority to determine paperwork and compliance burdens procurement forms and regulations have on suppliers as well as Government-wide reviewing authority on all procurement forms and information gathering needs and tools.

3. Question: Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Response: Yes. Legislatively mandated responsibility gives the Congress the necessary authority to review specific agency practices and procedures in carrying out those responsibilities.

It is an additional necessary check on the system which has historically been rather non-responsive to purely administrative appeals in these areas.

4. Question: Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   Response: Moderately so. Federal procurement reaches into every nook and cranny of the Federal bureaucracy and Congress.

   It is subject to countless administive rules, regulations, and by that very fact, is so complex and burdensome as to be overly costly and vitually inaccessable to wholesaler-distributors and other small businesses.

   Quite an impossible administrative task in our judgment.

   NAW believes that with legislatively mandated authority as outlined in this letter, coupled with strong Congressional oversight, OFPP can be successful in establishing a simplified, standardized, and uniform procurement system that is cost-effective for both the Federal Government and its suppliers. It will restore competition and accessability to the system for small business as well.

Senator Cohen, thank you for giving NAW the opportunity to comment on this important issue.

Sincerely,

John H. Fitch, Jr.
Vice President -
Government Relations

APR 28 '83

1983 APR 28 AM 11:51

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • TWX: 710-822-9406 AGC WSH

RICHARD S. PEPPER, *President* JAMES D. PITCOCK, JR., *Senior Vice President* VERNIE G. LINDSTROM, JR., *Vice President*
LARRY F.C. CHING, *Treasurer* HUBERT BEATTY, *Executive Vice President*

April 26, 1983

Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
SD-246
Washington, D.C. 20510

Dear Senator Cohen:

Thank you for your April 7th letter which requests AGC's view of the Office of Federal Procurement Policy. I will respond to the questions in the order asked.

1. AGC is in favor of the reauthorization of the Office of Federal Procurement Policy (OFPP). We believe the reauthorization of OFPP is necessary to stimulate change in outdated procurement statutes and regulations which are complex, inconsistent and burdensome to the procurement process. We believe that OFPP should be reauthorized for a three to five year period so as to provide Congress with an opportunity to reassess its effectiveness.

2. A & B. AGC believes that the present OFPP authority is adequate and workable. We believe that the existing relationships are the most desirable to all parties and that this relationship should be extended intact.

C. We agree that OFPP should have the testing authority to engage in innovative procurement techniques involving the waiver of socio-economic thresholds; however, such testing must be strictly limited to socio-economic programs. We do not believe that OFPP should tamper with the proven procurement methods used successfully within various industries and by the federal government. The construction industry, for example, favors the continued use of the formally advertised fixed price contract by the federal government. This procurement method has proven to be the most advantageous method of procurement for the federal government time and time again. AGC opposes attempts to supplant it with other "test" methods made under the guise of increasing competition or improving the procurement system.

THE FULL SERVICE CONSTRUCTION ASSOCIATION FOR FULL SERVICE MEMBERS

D. We do not offer any further areas of authority that should be provided to OFPP beyond that which it presently has.

3. AGC could support the codification of some fundamental reforms enumerated in Section 1 of Executive Order 12352. Specifically, AGC could support codification of the following reforms:

A. Establish programs to reduce administrative costs and other burdens which the procurement function imposes on the Federal Government and the private sector. Each program shall take into account the need to eliminate unnecessary agency procurement regulations, paperwork, reporting requirements, solicitation provisions, contract clauses, certifications, and other administrative procedures. Private sector views on needed changes should be solicited as appropriate;

B. Strengthen the review of programs to balance individual program needs against mission priorities and available resources;

C. Establish programs to simplify small purchases and minimize paperwork burdens imposed on the private sector, particularly small businesses;

D. Establish administrative procedures to ensure that contractors, especially small businesses, receive timely payment;

E. Establish clear lines of contracting authority and accountability;

F. Establish career management programs, covering the full range of personnel management functions, that will result in a highly qualified, well managed professional procurement work force, and

G. Designate a Procurement Executive with agency-wide responsibility to oversee development of procurement systems, evaluate system performance in accordance with approved criteria, enhance career management of the procurement work force, and certify to the agency head that procurement systems meet approved criteria.

AGC, however, would not support codification of two other "reforms" contained in Executive Order 12352; specifically paragraphs C and D of Section 1. Within paragraph C, the Executive Order implies that current, proven practices for generating competition will be tampered with in an attempt to improve the "effectiveness" of the procurement system. AGC opposes arbitrary attempts to revised time-tested and proven methods of procurement in the construction industry.

AGC is also opposed to the reference to functional specifications found in paragraph D of Section 1. Use of functional specifications in construction procurement and the implied elimination of the requirement for formal advertising are proposed solutions to problems which do not exist in construction procurement. The overwhelming amount of construction procurement is formally advertised competitive bid. Since each construction project is unique and built to order, precise specifications, terms and conditions are needed. For this reason, AGC opposes the Congressionally required use of this provision by federal awarding agencies.

4. AGC, in its contact and workings with OFPP, has found it to be a professional, responsive organization. While OFPP has not agreed with AGC on every issue, it has provided a detailed response as to why it does not share our viewpoint. We have also found that OFPP has been developing the Uniform Procurement System with full participation by other federal agencies and interested organizations. OFPP has provided opportunities to comment and informational briefings as well as conducting public hearings in the development of the Uniform Procurement System. We commend OFPP and its Administrator for the manner in which it is proceeding.

In closing, I thank you for the opportunity to comment and urge you to read the enclosed statement which AGC submitted to the House Subcommittee on Legislation and National Security in regard to the reauthorization of OFPP.

Sincerely yours,

John W Sroka

JOHN W. SROKA
Executive Director
Occupational Divisions

Enclosure

Statement of
The Associated General Contractors of America
Submitted to the
Subcommittee on Legislation and National Security
of the
Committee on Governmental Operations
House of Representatives
April 6, 1983
On the Topic of the
Reauthorization of the Office of Federal Procurement Policy
H.R. 2293

AGC is:

* More than 32,000 firms including 8,500 of America's leading general contracting firms responsible for the employment of 3,500,000-plus employees;
* 112 chapters nationwide;
* More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utility facilities;
* Approximately 50% of the contract construction by American firms in more than 100 countries abroad.

The Associated General Contractors of America (AGC) represents more than 32,000 firms including 8,500 of America's leading general contracting companies which are responsible for the employment of more than 3,500,000 employees. These member contractors perform more than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utility facilities.

The Associated General Contractors of America supports the reauthorization of the Office of Federal Procurement Policy (OFPP). The reauthorization of OFPP is necessary to stimulate change in outdated procurement statute and regulations which are complex, inconsistent and burdensome to the procurement process.

The Commission on Government Procurement, created in 1969, recommended that an Office of Federal Procurement be established to provide leadership in the development of government-wide procurement policies. In response to the Commission's recommendations, Congress enacted Public Law 93-400, "The Office of Federal Procurement Policy Act." This 1974 law established OFPP as a part of the Office of Management and Budget (OMB), with an initial authorization of five years, to provide "...overall direction of procurement policies, regulations, procedures and forms for executive agencies..." Public Law 96-83, "The Office of Federal Procurement Policy Act Amendments of 1979" reauthorized OFPP for an additional four years until October 1983. In doing so, Congress made clear that a comprehensive approach to the Federal Government's system for procuring property and services of all types was needed. Thus, it directed OFPP, as its first priority, to develop and propose a uniform, comprehensive, innovative procurement system for use by federal agencies without regard to current barriers or statutory requirements. AGC supports this goal.

Opponents of the reauthorization argue that the adoption of a single simple procurement code will render ineffective many of the most important safeguards developed over many years to ensure that public funds are spent wisely and economically. Opponents believe further that adoption of a single procurement code will constrain competition. While AGC shares some of these reservations, the adoption of a single, simplified procurement code should stimulate competition by reducing unnecessary requirements on contractors.

Functional Specifications

AGC has concerns, however, that the proposed legislation to reauthorize OFPP, H.R. 2293, goes far beyond that which is needed to accomplish reauthorization and for OFPP to execute its mission. Section 2, paragraph 10, for example, requires "the description of needs, whenever feasible, in terms of functions to be performed or performance required". This statement of needs is often referred as functional specifications. AGC opposes this concept as it will have detrimental effect on taxpayers and reduce competitiveness in the construction industry.

Use of functional specifications and the implied elimination of the requirement for formal advertising are proposed solutions to problems which do not exist in construction procurement. The overwhelming amount of construction procurement is formally advertised competitively bid. Since each construction project is unique and built to order, precise specifications, terms and conditions are needed.

Section 2 suffers from the same flaw that has existed in OFPP since at least 1976--a lack of recognition that construction procurement is different from the procurement of shoes, pencils, hardware, software systems and weapons.

The federal construction procurement system, for well over 100 years, has served the Nation and the taxpaying public well. It has done so primarily because of its devout emphasis on free and open competition with award of a single contract to the lowest responsible bidder. This procedure has assured intense competition within the construction industry. The construction industry is proud, rather than ashamed, that its procurement method permits award solely on the basis of price. Proud because it assures that federal construction projects will be completed at the most economical cost to the taxpayer.

Yet, despite the historical success of the open competitive bid system with single contract award to the lowest responsible bidder, we have seen, throughout the years, attempts to tinker with this proven method; attempts to apply procurement techinques that may be appropriate in other, less competitive industries, to construction procurement. While these so-called "innovative" methods have never proven successful in construction procurement, the attempts to force their application seem never ending; for example, the effort to apply the Office of Management and Budget Ciruclar A-109, the Major Systems Acquisition Regulation, to construction procurement. This 1976 Circular provides for the use of the same type of "functional specifications", as referenced by Section 2, in procurement with the federal contract awarding agency using subjective evaluations to select one proposal among many different ones submitted as solutions to a vaguely defined procurement need. While such a method might be workable in the procurement of major hardware systems, its application to construction procurement would place undue emphasis on, and give advantage to, construction firms with developer or consortium capabilities--characteristics not generally found in the average small business construction firm. It would also do so at the expense, and perhaps complete elimination of the open competitive bid system in federal construction procurement.

The traditional and proven competitive bid procurement system has served federal construction and the taxpaying public well, and must not be cast aside or tampered with under the guise of intending to increase competition.

We urge that H.R. 2293 be revised to specifically address construction procurement and make it clear that such construction procurement is not subject to the functional specification system.

Reliance on the Private Sector

The bill to reauthorize OFPP contains several positive provisions, some of which could be strengthened. One such provision is that which requires that the government, to the extent practicable, use commercial products to meet its needs. While AGC commends this statement, it should be strengthened to include commercially-available services as well as products and should also emphasize the contract method of procuring products and services.

In the case of construction services, the practice of performing public construction work with government employees and equipment is unsound, wasteful and counter to the best interests of the taxpaying public. In contrast to the contract method, construction by government forces does not provide adequate safeguards for public expenditures because accurate and comprehensive cost records are seldom kept, and are not open to public inspection. Independent research and cost studies indicate construction by contract is less expensive and more efficient. H.R. 2293 must act on this reality and require contracting out to the private sector for products and services.

Defense Construction Procurement Regulations

While AGC supports the development of a single model procurement code for use by the federal government, we do not believe this code should restrict the use of a separate, but not automonous, procurement regulation for construction by the Defense Department. We believe that such a regulation would provide the necessary latitude to the Defense Department to accommodate the intricate nature of some DoD construction projects.

AGC urges the above revisions to H.R. 2293.

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MAY 13 AM 8:11

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INDIANAPOLIS, INDIANA

May 10, 1983 '83

Honorable William Cohen
Chairman, Senate Sub-Committee
on Oversight of Government
Management
530 Senate Hart Building
Washington, DC 20510

Dear Senator Cohen:

I understand that you have introduced legislation (S.1001) that would authorize the continuance of the Office of Federal Procurement Policy for five years.

In view of the many problems and lack of policy clarity for our members who wish to provide products and services to the U.S. Government, we consider the continuation of OFPP to be an important objective.

We hereby wish to go on record in full support of S.1001 and trust that enactment can be secured during this session of Congress.

Very truly yours,

Robert G. Clifton
Executive Vice President

rer

cc: John Fitch

(215) 564-3484 1900 ARCH STREET PHILADELPHIA, PA 19103

File #701
717.07

american
consulting engineers
council

UNITED STATES MEMBER

1015 FIFTEENTH STREET, N.W., WASHINGTON, D.C. 20005-2670 ☐ (202) 347-7474
Telex 887445 AMCONENGRC WSH

April 22, 1983

The Honorable William S. Cohen
Chairman
Committee on Government Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of April 7, 1983, inviting our responses to questions concerning the Office of Federal Procurement Policy (OFPP).

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

The American Consulting Engineers Council provisionally supports the reauthorization of OFPP for a period of three years. OFPP, as a focal point for the development and implementation of government-wide procurement policy, has served a valuable and important function, particularly in development and implementation of the Federal Acquisition Regulations (FAR) and OMB Circular A-76. However, we are concerned with the conditions under which the reauthorization occurs.

2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

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Executive Vice President LARRY N. SPILLER • *Managing Director* BRUCE L. VOGELSINGER

A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

We believe that OFPP should nave sufficient authority to provide policy guidance, with agency procurement staffs acting on that guidance to develop appropriate implementing regulations.

B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

No. Authority to provide policy guidance is sufficient.

C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

OFPP should be granted testing authority only insofar as "tests" are in accordance with applicable laws, including Public Law 92-582 (the Brooks Act), governing the selection of architect-engineer services.

D. Are there other authorities which you feel OFPP should have?

OFPP can and should have the opportunity for more policy input in the development of OMB Circulars dealing with the procurement process, including those dealing with of consultants, procurement under grants and other procurement-related matters.

Similarly, OFPP should be given a broader mandate to provide policy guidance and serve as a mediator with procuring agencies in the development of procurement goals and objectives for small and small disadvantaged business.

OFPP should have authority to participate as a member of the interagency Technical Committee on Industrial Classification, since the Standard Industrial Classification (SIC) system is the basis for the collection and evaluation of federal procurement data. OFPP should also be tasked with responsibility for upgrading of the Federal Procurement Data System within the reauthorization period in order to provide a more uniform and reliable procurement data base.

Finally, the OFPP reauthorization should fix in OFPP principal responsibility for monitoring and evaluating agency compliance with OMB Circular A-76 and periodically reporting to Congress the progress of the government "contracting out" efforts.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

We believe this should be carefully considered, in order that officials with program management responsibility also maintain requisite authority in the procurement process. For example, selection of architect-engineer firms based on qualifications should be primarily accomplished by agency architects and engineers with appropriate technical background and experience, since clear definition of technical scope of work takes place through the selection process.

4. Has the OFPP, in your judgement, been able to function effectively in fulfilling its statutory mandate?

Generally, yes.

5. Please comment on other issues that should be considered in reauthorizing OFPP.

OFPP should be required to submit all policy matters and not simply "major" issues, for Congressional oversight and review.

As the Committee on Federal Procurement of Architectural-Engineering Services (COFPAES) has noted in its comments, on January 18, 1982, OFPP issued a Memorandum to Executive Agencies indicating that the Brooks Act, P.L. 92-582, applied only to construction related A/E services. Subsequently, after pointing out that this policy had not been submitted to Congressional Committees, as required by 41 USC 407 (b), the OFPP published a notice in the Federal Register to the effect that it was reconsidering the matter.

While we have since been assured that a clarification will be forthcoming from OFPP in the near future, we believe the confusion and uncertainty created when the original memorandum was released could have been avoided by continuing the 30 day Congressional notification requirement on "any policy" as presently set forth in 41 USC 407.

Thank you again, Mr. Chairman, for this opportunity to comment, and please include them in the hearing record on S. 1001.

Very truly yours,

William J. Birkhofer
Director
Governmental Affairs

WJB/jr

NSB

National Small Business Association

"The Voice of Small Business"

Founded 1937

April 21, 1983

The Honorable William Cohen, Chairman
Subcommittee on Oversight of Government
Management
Committee on Government Affairs
S. D. 346
Washington, D. C. 20510

Dear Senator Cohen:

This is in response to your letter requesting our answers to specific questions concerning proposed legislation in consideration of the reauthorization of the OFPP:

1. The Office of Federal Procurement Policy should be reauthorized for a five-year term.

2. The OFPP should have regulatory authority as originally provided in the OFPP Act of 1974. The OFPP should not have "testing authority" to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds.

3. Congress should prescribe agency management responsibilities.

4. The OFPP has not been able to function effectively in fulfillment of its statutory mandate. Experience over the past years indicates little progress has been made in improving federal procurement practices and procedures.

The following areas need more direct action by OFPP in fulfilling government policies on procurement which were stated by President Reagan in his 1983 "State of Small Business - A REport of the President Transmitted to Congress in March 1983," as follows:

> "Our government policies on procurement must be administered so as to utilize the best that small firms have to offer in goods and services. The role of government should not include performing

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> services and activities that can effectively and efficiently be carried out by the private sector, and we will work for policies which increase reliance on the private sector."

The past record indicates that OFPP has not functioned effectively in overcoming major obstacles to small business participation in federal procurement. These include:

1. Inadequate time allowed from the date of publication of the bid notice in the Commerce Business Daily to the bid opening date.

2. Inadequate time allowed from the date of publication of bid notice in the Commerce Business Daily to closing date for honoring requests for bid sets.

The U. S. Department of Commerce is responsible for compiling, editing and publishing the Commerce Business Daily. We have had meetings and discussions with responsible officials of the Department of Commerce directed toward improvement in the CBD which would facilitate its use by small business. We have been assured by the Department of Commerce that consideration will be given to our suggestions.

Changes in procedures suggested include the extension of time for solicitations and bidding as recommended in S. 272.

We also suggest that the CBD format be modified to list bid opportunities in specific categories as follows:

1. Competitive Bids
    a. Open
    b. Small Business Set-Asides
2. Information Synopses for Subcontractors' Alert
3. Noncompetitive Notice Listings
4. Contract Awards Listings
    a. Open
    b. Small Business Set-Asides

We also suggest that consideration be given to listing bid opportunities by four-digit SIC Code identification. This would permit a more direct identification of products and services of interest to potential bidders and a more readily identifiable basis for assessing business participation in the government procurement market by types of business in relation to the government procuring agency area of specific interest in procurement policy.

Our experience over the past 10 years with the NSB/BEAM service, which alerts our members to federal requests for bids, indicates that many bid opportunities for small business are lost due to the inadequate time allowed for receiving bid notices and preparation of bids.

Provision should be made for continued Congressional surveillance over the actions of the OFPP in relation to the pursuit of the Congressional intent to increase small business participation in federal procurement. In recent testimony on "umbrella contracts" OFPP presented a position favoring umbrella contracting, while the Small Business Administration presented a position opposing umbrella contracting as a constraint on small business participation in federal procurement.

Sincerely,

H Director

Herman Director
Federal Procurement Administrator

feda
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Executive Director Emeritus

1983 APR 29

April 26, 1983

The Honorable William S. Cohen
United States Senate
530 Senate Hart Building
Washington, D.C. 20510

APR 29 '83

You recently received a letter, Senator Cohen.....

from John Fitch of the National Association of Wholesaler/Distributors in response to specific questions you asked regarding the views of NAW/D on legislation to reauthorize the Office of Federal Procurement Policy for five years.

The answers of this 300 member national association of distributor/dealers of foodservice equipment and supplies to your questions are the same as Mr. Fitch's and I will not duplicate them.

I would, however, like to bring to your attention a problem that was created about two years ago when the military services discontinued local purchases of their foodservice equipment requirements and assigned it to the General Services Administration, Richmond, VA.

It is my understanding that this was contrary to the directive of the Office of Federal Procurement's policy. To the best of my knowledge there was no rational reason given when the change was made that would justify withdrawing procurement of foodservice equipment from local sources, including the design and installation of foodservice facilities.

With the 300 members of this association plus an added 150 or more non-members, equipment, supplies and services are available for any government installation in the country at competitive prices and a readily available source for follow up service when needed.

Senator Cohen, we appreciate your interest in asking for comments on this ussue and if further information is needed we will be pleased to help in any way we can.

Sincerely,

William Englehaupt

William Englehaupt
Executive Director
WE/jm

cc: J. Fitch, National
Assoc. Wholesaler/
Distributors

Coalition
for
Common
Sense
in
Government
Procurement

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'83

1983 APR 22 AM 10:16

April 22, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
SD-346
Washington, D.C. 20510

Dear Senator Cohen:

Thank you for giving the Coalition the opportunity to comment on the reauthorization of the Office of Federal Procurement Policy (OFPP).

It is our opinion that OFPP could provide valuable functions to the government, and industry, if its original powers were returned. In addition, it would be particularly effective for OFPP to have oversight of agency procurement regulatory and policy (including internal agency policies) making activities. With this additional review process, there is an opportunity for someone, other than the procuring agency which develops the policy, to scrutinize the regulation or policy for unnecessary burdens or adverse impact on businesses.

The Coalition considers it advantageous that OFPP have the testing authority that is provided for in the proposed Uniform Federal Procurement System. This would allow the government to examine different procurement techniques without hindering the daily operations of individual agencies. We envision that OFPP could request the short-term assistance of selected agency procurement personnel so that a number of agencies could jointly participate in the test efforts and learn from the experience.

Over the past few years, OFPP's importance appears to have withered to the degree that industry wonders if it will exist next year. The procurement activity of the federal government is worth billions of dollars and there needs to be an overseer of how agencies spend this money -- a "watchdog" that operates in full view and with authority. Without an effective OFPP, agencies can too easily operate as if they are functioning in a vacuum, as opposed to being a part of a government-wide organization. The procurement process would be a nightmare for government vendors if there were no office to coordinate and monitor the developing procurement rules.

Finally, S. 1001 does not increase the agency's budget, and the Coalition thinks it is essential that additional funds be appropriated for OFPP so it could better handle its responsibilities over the next five years. With more funds, in addition to the obvious reasons, the Federal Acquisition Institute, for example, could improve its training activities for government procurement personnel -- an extremely valuable and badly needed service today.

The Coalition is willing to meet with your staff or answer any other questions you might have regarding OFPP. Please do not hesitate to contact us. Again, thank you for this opportunity to offer our views.

Sincerely,

Paul J. Caggiano

Paul J. Caggiano
President

PJC/mm

PROFESSIONAL SERVICES COUNCIL

1730 Pennsylvania Ave., NW
Suite 1200
Washington, DC 20006
(202) 223-3835

Leadership, Advocacy and Support for the Nation's Professional Services Industry

R. Michael McCullough
President
Virginia Littlejohn
Executive Director

April 26, 1983

The Honorable William S. Cohen
Subcommittee on Oversight of Government Management
U.S. Senate
Washington, D.C. 20510

Dear Senator Cohen:

We appreciate the opportunity to comment on S. 1001, the bill you introduced and Senator Roth has cosponsored, which would reauthorize the Office of Federal Procurement Policy (OFPP) for an additional five years.

We have addressed each of the four questions separately in the attachment to this letter. We are pleased to be able to contribute to your deliberations and would be happy to provide additional information should you so desire.

Sincerely,

VIRGINIA LITTLEJOHN

Virginia Littlejohn
Executive Director

Question 1

Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

Answer

The Professional Services Council supports the reauthorization of the OMB Office of Federal Procurement Policy (OFPP). We believe a five year term would be appropriate and that in any case reauthorization should not be less than 3 years.

Question 2

(a) Should the OFPP's present authority as provided in the 1979 amendments to the OFPP act be extended?

Answer

Yes--subject to inclusion of some form of "regulatory authority" treated in the next question.

(b) Should the OFPP have regulatory authority as originally provided in the OFPP act of 1974?

Answer

Yes. PSC has consistently supported the reduction of regulatory burdens placed on contractors under the present federal procurement system. However, fundamental problems created by the present system require that specific statutory authority be vested in OMB to make final decisions on procurement reforms and effectively implement such reforms.

(c) Should OFPP have testing authority as provided in the proposed uniform federal procurement systems, etc.

Answer

Yes. We suggest that the legislative history of this measure make clear to OFPP that major procurement policy and operational problems requiring immediate attention not be subjected to long testing of prototypes in the pursuit of solutions.

(d) Are there other authorities which you feel OFPP should have?

Answer

No.

Question 3

Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Answer

Yes. The Professional Services Council seeks to avoid additional regulatory burdens in the procurement system. However, procurement problems at the federal level have been so immune to fundamental reform, that we would make an exception to our normal view that regulations should be avoided wherever possible. Additionally, we would suggest that the proposed legislation provide that procurement management be improved in two specific respects: (1) the role of senior procurement managers be carefully defined and accorded appropriate high level status and recognition; and (2) OFPP cooperate with OPM to develop professional standards for the procurement workforce. Examination of private sector job design and qualification standards for procurement professionals could be helpful in upgrading the professionalism of the procurement workforce.

Question 4

Has the OFPP in your judgment been able to function effectively in fulfilling its statutory mandate?

Answer

The answer has to be made on two levels. On the most fundamental level of fostering basic, overdue and urgently needed reform of the procurement system, the answer is no. Political, bureaucratic and procurement system complexities all militate against such a result. The absence of adequate regulatory authority certainly has been a factor.

On the positive side, OFPP has provided a constructive forum and clearing house for raising issues, analyzing alternatives and improving the understanding within the government and between the government and the private sector of basic procurement issues. In addition, some of OFPP's major initiatives (FAR, Uniform Federal Procurement System, etc.) are appropriate and proceeding in the right direction. The problem has been gaining consensus and converting ideas and proposals into action and results.

1983 APR 27 AM 10 21

MMDA
MASS MERCHANDISING DISTRIBUTORS' ASSOCIATION, INC.
Shepard-Benning Building
St. Joseph, Michigan 49085
(616) 983-6684

April 25, 1983

The Honorable William S. Cohen
UNITED STATES SENATE
530 Senate Hart Building
Washington, D.C. 20510

Dear Senator Cohen:

John H. Fitch, Jr., Vice President-Government Relations, National Association of Wholesaler-Distributors sent us a copy of your April 11 letter to him.

Here are our responses.

1. We recommend 5 years.
2. A. Yes.
   B. Mandatory
   C. Mandatory
   D. We recommend that the OFPP have the directive authority as established in 1964.
3. Yes.
4. Simplification of the procurement system is highly needed.

Best wishes,

MASS MERCHANDISING DISTRIBUTORS'
ASSOCIATION, INC.

John Paul Taylor

John Paul Taylor
Executive Director

JPT:bl
cc: John H. Fitch, Jr.

MAY 5 '83

May 2, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The American Subcontractors Association (ASA) is a national trade association with nearly 5,000 members and 49 chapters nationwide. ASA is the only national trade association that solely represents the concerns and interests of all construction subcontractors, regardless of trade specialty. According to the latest government census, subcontractors perform over 80 percent of the commercial/industrial construction in the United States. ASA's primary mission is to improve business conditions for its members through education and cooperative action.

Many ASA members perform construction for the federal government. Sometimes they serve as prime contractors, contracting directly with the federal government. More often, they serve as subcontractors, dealing with the government only through the prime contractor. In both situations, the procurement practices of the federal government have a direct impact on these construction contractors.

Thus, ASA has a strong interest in the Office of Federal Procurement Policy - whether it will continue to exist and what will be its authority and power.

ASA supports the reauthorization of OFPP. We believe the Office has played an important role in the procurement process by serving as a focal point for all interested parties.

That is not enough, however. The effective management of the procurement process requires a high degree of direction and control. ASA believes that, to be effective, OFPP must operate on a plane above the procurement agencies and have regulatory authority rather than merely directive or advisory authority.

Therefore, ASA strongly recommends that Congress reinstate regulatory authority for OFPP.

AMERICAN SUBCONTRACTORS ASSOCIATION 8401 CORPORATE DRIVE, SUITE 540, LANDOVER, MD 20785
(301) 459-8494

There are numerous examples of problems and delays created because OFPP does not have the stature or authority needed to develop and enforce policy. A recent example involves OFPP's proposed policy letter on retainage (47 Fed. Reg. 51643 (1982)).

The Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255) allows federal agencies great latitude in establishing policy on the terms of payment on federal construction projects. Traditionally, agencies have adopted the practice of withholding a percentage of the progress payments agreed upon for work even though it may have been properly performed. Generally, a portion of each progress payment, sometimes as much as ten percent, is withheld until the entire job is completed and accepted. Thus, as the contractor completes 100 percent of each segment of the contract, he receives only 90 percent of the agreed price for such completion. The retained monies may be held for months, or even years, even though the contractor's work has been completed and accepted by the agency. Retainage substantially reduces the operating and expansion capital of contractors.

Current government agency practices cover a wide range. The General Services Administration usually withholds a full ten percent retainage. On the other hand, the Department of Defense does not use retainage as a routine administrative practice for "construction projects which are on or ahead of schedule and otherwise substantially in compliance with contract requirements."

Last year, the Senate approved legislation that required that progress payments "be made in full to the contractor without retention of any of the progress payment due, unless the contracting officer finds and determines that the contractor has failed to make satisfactory progress toward the timely completion of the contract in conformity with its terms and conditions."

Apparently in response to this legislation, OFPP's proposed policy letter was issued in November 1982. Public comments were due on the proposal on or before December 30, 1982.

During the four months since that time, the proposed policy letter has been debated within the Office of Management and Budget (OMB) by OFPP and the Management Division. The basis of the debate seems to be whether retainage is a procurement issue under the jurisdiction of OFPP or a cash-flow issue under the jurisdiction of the Financial Management Division.

ASA believes retainage is clearly a procurement issue. Nonetheless, while the dispute continues, the issue remains unresolved and the interested parties - contractors, agencies, and the Congress - are in limbo.

ASA believes this kind of problem and delay could be resolved if OFPP had the authority and stature necessary to provide true management and strong leadership on procurement issues with the procuring agencies and within OMB.

In summary, Mr. Chairman, ASA urges the Congress to reauthorize OFPP. At the same time, however, ASA urges the Congress to reinstate regulatory authority for the Office.

Mr. Chairman, I request that this letter be made a part of the record of hearings concerning the reauthorization of the Office of Federal Procurement Policy.

Respectfully submitted,

Robert B. Johnson

Robert B. Johnson
President

MACHINERY and ALLIED PRODUCTS INSTITUTE
1200 EIGHTEENTH STREET, N.W. WASHINGTON, D.C. 20036 202-331-8430

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May 10, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Extending the Office of Federal Procurement Policy

In connection with the Subcommittee's hearings and consideration of your bill S. 1001, and the current "sunset" review of the Office of Federal Procurement Policy (OFPP), we offer the views of the Machinery and Allied Products Institute (MAPI). As you may know, the Institute represents the capital goods and allied product industries of the United States. Although the bulk of the companies in these industries sell primarily to the commercial rather than to the government market, many furnish products which are essential to the government, particularly in the national defense area. And these corporations have a deep interest in the procurement policies and regulations that are used by the federal government in connection with its purchases from private industry. The "sunset review" of OFPP is occasioned by the Office of Federal Procurement Policy Act, as amended, Section 11 of which currently authorizes OFPP appropriations only through the fiscal year ending next September 30.

As to the issues currently before the Subcommittee, MAPI strongly supports the continuance of OFPP. We concur with the Administration's recommendation that the extension be for five years rather than for the three-year term included in H.R. 2293 recently approved by the House Government Operations Committee. On the other hand, we strongly disagree with the Administration's recommendation that regulatory authority, which was taken away from OFPP under the terms of the 1979 OFPP-extension legislation (Public Law 96-83), not be regranted to OFPP at this point. We agree with the House Government Operations Committee, the Comptroller General, and we believe virtually all of the nongovernment commentators on this point--OFPP should now be extended the regulatory authority which it had under the original OFPP statute enacted back in 1974. Finally, we urge that greater attention be given to according OFPP its proper role as the lead Executive branch agency in the formulation of procurement policies.

The OFPP Extension Issue

In our view, OFPP under its current Administrator, Donald E. Sowle, and his predecessors, Karen Hastie Williams, Lester Fettig, and Hugh Witt, has made a very substantial contribution to the improvement of the federal government's procurement policies generally.

We do not necessarily endorse all of the specific actions taken by OFPP in its nearly nine years of existence. We do think, however, that there have been a number of significant accomplishments in the past, and that the following major projects currently underway with respect to procurement policy more than justify the continued existence of OFPP:

1. The effort to achieve significant revision in the basic federal procurement statutes, such as that embodied in S. 338, the proposed "Competition in Contracting Act," introduced by the Chairman.

2. The program outlined by Administrator Sowle to implement Executive Order 12352, President Reagan's administrative program for procurement reform.

3. The effort to develop the Federal Acquisition Regulation (FAR), the uniform government-wide procurement regulation, which project finally now seems to be nearing completion.

In addition, of course, Mr. Sowle, in his testimony to the Subcommittee, has indicated a number of other important procurement areas in which major OFPP policy letters and similar or related materials are currently in preparation.

As to the length of the OFPP extension, we think that a period of five years is preferable to the three years approved by the House Government Operations Committee. There are a number of important tasks remaining to be performed by OFPP, including particularly its review of and response to recommendations for further reform in the procurement area which have been made by industry and other interested parties from outside the government./1 As we see it, work on these recommendations is likely to take a considerable period of time, and it would seem that a five-year extension would be far more suitable than three years for the accomplishment of that purpose.

Further, and this is a point which we recognize has been made by others, a longer term extension would be more likely to facilitate the acquisition and retention of appropriate professional staff by OFPP, because of the at least implied greater job security that would be inherent in the longer term extension. Indeed, although a term-of-years extension probably is preferable at this point, we conceive the strong possibility that by 1988, when an additional five-year term will have expired, it may be appropriate to give serious consideration to making OFPP a permanent organization within the federal government.

1/ See the 85 problems and issues of concern to the procurement community, which are listed in Appendix C of the Proposal for a Uniform Federal Procurement System submitted to Congress on February 26, 1982.

Restoration of OFPP Regulatory Authority

We note that in his testimony to the Subcommittee, OMB Deputy Director Wright has urged that, although OFPP should be granted directive authority, it should not be given the regulatory authority which was taken away under the terms of the 1979 OFPP extension. The basic reason, as stated by Mr. Wright, for the Administration's position on this matter is that "regulatory authority could create unnecessary tension between OFPP and the regulatory agencies (especially DOD, GSA, and NASA)." First, as has been indicated by a number of witnesses to the Subcommittee, particularly Lester Fettig, one of the former OFPP Administrators, there is very little if anything on the record to indicate that OFPP exercise of regulatory authority during the 1974-79 period (when it possessed such authority) created any significant problems in the relationships between OFPP, on the one hand, and the departments or agencies with major procurement responsibilities, on the other hand. Presumably Mr. Wright is reflecting fears expressed by these agencies to OMB as to what might happen in the future. Frankly on the basis of its record to date, we find it difficult to believe that anyone would seriously be concerned that OFPP would be likely to "overuse" any such regulatory authority. At the same time, however, in our view it perhaps might be desirable to cause some of these departments and agencies some "tension" or at least concern that their resistance to reform in certain areas might eventually be challenged by OFPP.

To illustrate the point, the Institute has long been concerned with a matter that has been brought to the attention of the Governmental Afffairs Subcommittee on Federal Spending Practices and Open Government in the past—the resistance of the Defense Department to reform in the procedures which are used to solicit comments and recommendations of interested nongovernment groups on proposed policies and rules. Indeed, as you know, the OFPP statute (41 U.S.C. 405(d)(3)) requires the Administrator to establish "criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms."

We believe, along with other observers both inside and outside government, that such participation can be effective only when (1) sought before the policy or rule has been finally decided upon and is still under consideration, (2) the background and reasons for the policy or rule are disclosed, and (3) sufficient time is extended to outside groups to furnish such comments. These conditions to the effectiveness of outside group participation appear to be generally recognized in pertinent provisions (e.g., Section 1.501) of the draft FAR. But the Defense Department (DOD) in the administration of its Defense Acquisition Regulation (DAR) does not appear to follow the first and second conditions we have noted. Indeed, the Institute, which is normally requested to furnish comments on proposed DAR revisions, has repeatedly called to DOD's attention that DAR proposals are invariably submitted for comment without a statement of the background of and reasons for the change. Although DOD officials have indicated to us in the past that they understand the problem and intend to take some corrective action, we have been unable to detect any improvements thus far despite these reassurances. Indeed the lack of DOD action on this point leads us to conclude that DOD is likely to resist the implementation of the above-cited draft FAR provision when it becomes effective.

As we have noted, this is but a single example of an issue concerning which there is some reason to suspect that DOD—and perhaps equally GSA and NASA—are likely to disagree with approaches taken by OFPP. Under these circumstances, we view with much concern the current plans, as we understand them, that, after the FAR is published in final form, the administration of FAR will be handled jointly by DOD, NASA and GSA, without apparently any more than an advisory role for OFPP. Clearly this is an area where OFPP needs regulatory authority to ensure agency conformance to both the OFPP statute and regulatory reform policies generally. If the potential exercise of regulatory authority by OFPP under these circumstances is likely to cause "tension" on the part of DOD, NASA, and GSA, so much the better.

Preservation of the Proper Role for OFPP

At the time of the last OFPP extension in 1979, we voiced to Senator Chiles and the members of the Subcommittee on Federal Spending Practices and Open Government our concern that, to a significant extent, there was not sufficient consideration being given, within the Executive branch of the government, to the proper role of OFPP in establishing procurement policy. As examples of what we had in mind we cited what we felt to be the misuse of OFPP to support the use of the government contract as a vehicle for the enforcement of President Carter's wage-price guidelines. On the other hand, on matters which clearly did relate to procurement policy, such as the issue of controls on defense contractor profits under the Renegotiation and Vinson-Trammell Acts, there was clear evidence that OFPP had been substantially bypassed in the formulation of the Administration position on the issue at that time.

Under the Reagan Administration, we had hoped that perhaps this problem might have been resolved. However, we were disabused of that notion with the publication on January 24, 1983 in the Federal Register by OMB of proposed revisions in Circular A-122 relating to political advocacy. As this Subcommittee is no doubt aware, the publication of the proposed regulations which would have been applicable to all government contractors (for-profit as well as nonprofit) and grantees, created a storm of protest and eventually led to hearings by the House Government Operations Committee, following which OMB Director Stockman withdrew the proposal in order to provide additional study and presumably an opportunity to consult further with interested parties on the matter. Our purpose in citing the issue at this point is not to argue the defects of the proposal which we think were readily apparent and even finally conceded, although with some reluctance, by both Messrs. Stockman and Wright. The point that is pertinent here is that the proposal apparently was drafted and defended in public, at least prior to the initial congressional hearing on the matter by the House Government Operations Committee, by Michael Horowitz, the OMB General Counsel. Further, as far as we can determine, OFPP played no role in the development of the policy embodied in the proposed regulations. This is despite the fact that the proposed regulations concern a matter of vital importance to government contractors, and OFPP is charged under its governing statute with the leadership role and responsibility with respect to the development of federal procurement policy. Clearly, the fiasco which resulted from the attempt to handle this proposed regulation without involving OFPP, might at least have been substantially mitigated if OFPP had been accorded its proper policy role in the matter. We hope that this unfortunate experience might suggest to the Administration, and to Messrs. Stockman and Wright in particular, that OFPP actually does perform a useful and perhaps indispensable function in the federal government. Its expertise and experience should be used when matters of procurement policy are to be resolved.

* * *

This concludes our statement of our views on the pending legislation concerning the extension of OFPP. If we can be of any further assistance, please let us know.

Respectfully,

Charles Stewart
President

ELMER B. STAATS
5011 OVERLOOK ROAD, N. W.
WASHINGTON, D. C. 20016

[illegible] 20 PM 2:39
April 18, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
  of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of April 7, inviting me to comment with respect to the Office of Federal Procurement Policy whose authorization expires on September 30, 1983. I will respond to the questions set forth in your letter in the order in which they are presented.

1. I would favor a minimum authorization of OFPP of five years. This is a permanent and continuing function and the only logic I know of for a limitation is to provide a more or less automatic way to bring the matter back before the administration and the Congress for review. This, of course, could be done in other ways but I know of no practical argument against some reauthorization requirement but I would certainly favor a five-year period as a minimum.

2. A. I am aware that at least some of the procurement agencies have resisted the provision included in the 1974 legislation which gave the OFPP regulatory authority with respect to procurement policies, regulations and forms relating to procurement. It was my view when I testified on this subject in 1979 that the alternative which was incorporated at that time, namely giving the Director authority to rescind any rule or regulation inconsistent with the general policies issued by OFPP, was not really a workable approach. The question of what is consistent or inconsistent is a difficult one to decide and I believed then, as I do now, that a more direct approach is the proper one.

There is, of course, always the question as to a differentiation between general regulations as against more detailed type of regulations which I believe have been the concern of the procuring agencies. This is a matter of judgment and must be worked out on a pragmatic basis, case by case, between the Director of OFPP and the procuring agencies. I believe that the wording of the Committee Report would help on this point by way of guidance to avoid a situation where OFPP regulations become unnecessarily detailed. There is ample precedent, however, in the types of regulations issued by OMB in many other management and budgetary areas and I, therefore, do not consider this to be a valid reason for not providing regulatory authority to the OFPP. Without such authority, there is no way that we can assure consistency in practices, procedures and policies as among the different procuring agencies.

B. The Federal Procurement Commission placed high priority on the need for a uniform Federal Procurement system. Much progress has been made in the formulation and development of such a statement and the OFPP will need regulatory authority, plus strong leadership, to be certain that this system is placed into effect.

It has been my view that OFPP could utilize agency resources to a large extent in formulating drafts and achieving consistency to the maximum extent but the residual right and responsibility to issue regulations should remain with OFPP.

C. You inquire whether OFPP should have testing authority to engage in innovative procurement techniques, involving the waiver of statutory socio-economic thresholds, under case-by-case supervision of the Director of the OMB and the Congress. The issue of achieving socio-economic objectives through procurement was a matter of extensive discussion within the Procurement Commission and I do not think I can add much beyond the wording of the Commission report itself on this point. I would certainly favor language which would provide that the OFPP should be able to test innovative procurement techniques where these hold promise of more economic and efficient procurement operations. If this is done with respect to socio-economic objectives, it should be done solely for testing potential savings by removing or modifying existing requirements such as small business set-asides, Davis-Bacon restrictions, and so forth. In general, procurement is not a cost-effective way to accomplish these objectives but I am aware that there are a large number of such provisions written into procurement statutes. As a possible alternative, you might wish to consider requesting the General Accounting Office to undertake studies of the cost of such programs on the procurement operations of the Federal Government with the idea that Congress would have an opportunity to determine whether procurement is the most cost-effective way to achieve these objectives. This would still leave a considerable range for innovative and testing approaches by OFPP. For example, in the acquisition of commercial products, payment and inspection procedures, parallel development, and so forth.

D. With respect to other authorities which might be placed in the OFPP, I have not given this matter recent thought but I suspect that the language in the 1974 statute is broad enough to achieve the basic objectives of the Federal Procurement Commission.

3. I have not recently reviewed the agency management responsibilities set forth in the President's Executive Order of March 17, 1982, but my impression is that this is a useful way to approach the subject, given the President's responsibility for management of the executive branch. I question whether the Congress wishes to incorporate the order specifically into the statute but certainly the statute should recognize the President's responsibility for sound procurement management within the agencies.

4. In general, I believe that OFPP has made good progress. My experience in dealing with this subject, going back over many years, is that the procuring agencies have resisted and will continue to resist central actions which they consider to be an impingement upon their responsibilities as procuring agencies. We now have the mechanism, however, which will help bring consistency in procurement operations and greater economy and efficiency in spending procurement dollars. This is especially important now that the defense procurement is increasing and will continue to increase in the years ahead. It is important, therefore, that the regulatory responsibility be restored to OFPP so that OFPP and OMB can be held accountable to the Congress for achieving the basic objectives of the 1974 legislation.

Sincerely,

Elmer B. Staats

Elmer B. Staats

APR - 83

122 Highland Street
Holden, Massachusetts 01520

April 20, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing in response to your letter of April 7, 1983, regarding the legislative reauthorization of the Office of Federal Procurement Policy as well as addressing certain vital issues fundamental to the effective functioning of this office.

The Commission considered the creation of this central policy office as its initial recommendation. Without the existence and leadership of the Office of Federal Procurement Policy, as proposed and as structured by the Commission, the achievement of the proposed improvements in the procurement process and implementation of the recommendations of the Commission would have proceeded with great difficulty and without organization.

I appreciate the opportunity as one of the Commissioners on the Commission on Government Procurement to respond to your questions and comment on other issues that you may desire to consider.

If you have any additional questions regarding my response or comments, please contact me.

Sincerely,

Paul W. Beamer

P. W. Beamer
former Commissioner - Commission on Government Procurement
PWB/eac

1) Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

A) Yes, the Office of Federal Procurement Policy should be reauthorized.

Although previous reauthorizations have been for a five year period, the Commission intended this Office to be the leader and motivating force for the major implementation of the Commission Report.

The growth and complexity of the total procurement function both within Government and industry have not declined. The need for an OFPP is greater today than when initially proposed and first created in 1974. The function of OFPP as intended by the Commission would dictate a permanent and indefinite life. To provide adequate continuity in finalizing the Federal Acquisition Regulation (FAR), the proposal for a Uniform Federal Procurement System (UFPS) as a model for procurement reform, the continued existence of OFPP is essential if procurement reform within the Federal Government are to become a reality. These are some of the vital issues and major concerns addressed by the Commission. It is discouraging a decade later to find that we have not progressed further with the implementation of many of the vital concerns. Without the diligence and dedication of OFPP, confronted at times by external obstacles, our work and recommendations would not have reached the present status.

2) The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation with was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

2-a) Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

A) The authorities given to OFPP under the 1979 Amendments to the Act were tailored to meet the requirements of specific statutory assignments have been successfully completed.

The authorities provided in the original OFPP legislation should be reinstated in order that this Office can perform the basic responsibilities, direction and authority as recommended in the original Commission's Report.

2-b) Should the OFPP have regulatory authority, as orginally provided in the OFPP Act of 1974?

A) The regulatory authority originally provided in the OFPP Act of 1974 supported the basic structure and responsibilities of this Office as proposed and recommended by the Commission. To my knowledge there is no authoritative source in the Executive Branch knowledgeable of the manner in which the agencies and departments are implementing or interpreting Government wide procurement policies and impact onthe private and public sectors. The existence of OFPP is a single point which should have objective authority with respect to procurement policies, regulation, procedures, utilized by contracting agencies.

Congress provides adequate flexibility to the Executive Branch in conducting procurement; likewise, OFPP must prescribe policies and regulations in a manner that recognizes legitimate differences in products and services required to meet agency needs.

"Regulatory authority" does not imply a "regulatory agency." OFPP would regulate only in the sense that it proscribes and participates in the policies and regulations governing the manner in which the Federal agencies conducted procurement.

The OFPP should function as a group independent of any agency engaged in any procurement function and focus on procurement problems, procedures, regulations and forms.

2-c) Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

A) The entire procurement process is a dynamic ever changing business process. Modern procurement practices are a vital part of total "materials management" which encompases "money management", material control, and in most major corporations, one of the most crucial management disciplines, particularly in the successful enterprise. These practices, organizations and philosophies did not develope spontaneously, but were evolved because of the high percentage of both cost and selling price of products which are directly contracted by the material management and procurement group.

There is a need in the Government procurement and materials management for testing and evaluating procurement techniques. These tests may require waivers of existing statutory provisions and thereby dictate the need for a provision for testing to be included in the statute.

More selective application of socio-economic thresholds, broader investigation and use of commercial practice to procure commercial products, development of simplified purchasing techniques for specific commodity group - are each major areas which should be tested.

2-d) Are there other authorities which you feel the OFPP should have?

A) The Administrator of the Office of Federal Procurement Policy should be provided with regulatory authority and this authority should not be subject to concurrence by the Director of OMB. The present status restricts the Administrator's authority and inhibits his ability to effectively undertake procurement reform.

3) Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

A) Yes, those principles enumerated in the Executive Order are fundamental to sound procurement and should be included in statute in order to ensure that procurement reform is pursued in accordance with the multi-recommendations and subsequent refinements proposed by the Commissioner on Government Procurement.

4) Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

A) The OFPP has functioned in an outstanding manner in view of the restraints imposed by the 1979 Reauthorization Act.

In spite of the restraints, the OFPP has:

1) Kept the FAR project alive

2) Succeeded in getting Executive Order 12352 issued

3) Maintained discussions and explorations of sound and innovative procurement policies.

The stature and effectiveness of the Office has been reduced by the elimination of OFPP's directive authority and the subjection of the actions of the Administration to concurrence by the Director of OMB.

OFPP was intended to provide a "focal point" for procurement policies and regulations. The assignment of responsibility for issuing procurement regulations to GSA, NASA, DOD by the Executive Order has complicated the role of OFPP.

These actions have relegated the OFPP to a position in which sources both inside and outside the Government consider the Office "second class". The imposition of these restraints in no way concur with the recommendations and responsibilities envisioned by the Commission which are firmly and distinctly stated in the first recommendation of the Report - "This Office was to operate on a plane above the procurement agencies and have directive rather than merely advisory authority." The present statute is not conducive to fostering the objectivity, innovation and relationships needed to provide the overall improvements in the procurement process.

JAMES E. WEBB

2800 36TH STREET, N.W.
WASHINGTON, D. C. 20007

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April 20, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
United States Senate
Washington, D. C. 20510

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Dear Senator:

I appreciate the opportunity your letter of April 7 affords me to comment on the need for a strong professional leadership role for the Office of Federal Procurement Policy, as recommended by the Commission on Government Procurement. This is very much needed. More and more we are learning that a coordinated, government-wide systems approach is essential if our government is to be effective. Such a "systems approach" was effective in NASA and has proved its worth in many endeavors. Congress can gain much in carrying out its policy and oversight functions from a thoroughly professional, constantly improving procurement system.

As the Director of the Budget under President Truman, it was one of my important responsibilities to make sure that the staff of the Bureau of the Budget worked vigorously and continuously with the different departments and agencies which were engaged in large procurement activities. It was our responsibility to take actions, with the full support of the President, which would bring pressure to bear on the leadership of the various large units of government to pay attention to improving their internal administrative structure, and their decision-making and actions in procurement. This need for a central professional group is even more true today than it was in the late forties. The main reason is that when very outstanding individuals are brought into the government to head a department or unit or serve in an important leadership role, they are faced with so many large problems in areas of substance that it is almost impossible for them to master the intricacies of the administrative actions that undergird the effectiveness of their substantive roles.

Therefore, a constant pressure from the highest levels of government is necessary to keep before these people their responsibility for strong leadership in administrative improvement if they are to do one hundred percent of their job and not just the part that presses for immediacy or is less onerous and less technical. It is to stress this role of leadership at the Presidential level, including the Executive Office of the President, that I wish to urge strengthening the Office of Procurement Policy and providing it with the kind of statutory base which has the added value of assistance to Congress in exercising its oversight role. Both Presidential leadership and Congressional oversight are needed to get continuous attention to this important area by the senior officials within the Executive Branch. This will also provide a means through which all elements of our society can have confidence that the policy of using procurement to define the relationship between the government and the private sector are consonant with our democratic institutions. This would certainly argue for reauthorizing the legislation underlying the Federal Procurement Policy Office and providing even more than the five-year period that has been suggested to indicate that this is a long-term, hard-driving effort to improve the government uses of the private sector in accomplishing its governmental responsibility.

To be fully effective, it would be very important for the new legislation to return to the authority granted the office prior to the amendments of 1979. If anything, my experience shows that it is more important to strengthen the directive authority as provided in the Act of 1974, rather than to weaken it by accepting the 1979 amendment structure.

As to the testing authority you list in your paragraph 2.C., I have looked over the answers provided by the American Bar Association, of which I am a member, to your Committee and believe they are the best point of action in this field. This refers also to your paragraph 2.D. with respect to other authority. My feeling is that the ABA has given you a splendid base from which to consider the actions to be taken by your Committee. As to your paragraph 3, I believe Congress should prescribe the agency's management responsibilities, rather than leave them to executive order.

As to your paragraph 4, I believe the present Director of the Office of Procurement Policy, Don Sowle, who was the Executive Director of the Commission on Government Procurement, has done all that could be done within the framework of the Executive Office as now organized. Procurement policy should be non-political and have bipartisan support. A very strong professional team, thoroughly qualified and working with those officials in the various government agencies who wish to see the total procurement process made more efficient and more effective, is the objective, I think, the Committee should seek in its consideration of the future of this office.

Although I know you and your staff have access to the Comptroller General's pronouncements, I am enclosing a copy of his address made at the College of Business Administration at the University of Notre Dame, March 24, 1983, entitled "Perspectives on the Federal Budget," to make it easy for you to refer to it. Bowsher states, after going through many of the problems faced by the Executive Branch and contributing to the large deficits which seem almost impossible to eliminate: "We need to move to a broad concept of financial management in the Federal Government that encompasses the processes and functions associated with acquiring, managing, deploying and accounting for the Federal Government's financial resources. We need systems that will assure us that, to the maximum practical extent, these financial resources -- and the real resources they represent -- are acquired and used lawfully, efficiently, and effectively to achieve purposes of commensurate value to society." It seems to me this is the focus your Committee might well employ in your study of the role of the Office of Procurement Policy. Mr. Bowsher has seen the procurement problem from the Defense Department point of view, the public accounting point of view, and now as Comptroller General. Anything that undermines the breadth of emphasis on those matters he refers to should, in my view, be put aside and efforts made to strengthen those recommendations which he has made. Comptroller General Bowsher states further: "In Government, we need a bi-partisan recognition of the problem and a resolve to deal with it. We also need the development of a consensus of agreement among public officials and the full spectrum of private interests on an equitable allocation of sacrifice."

With much appreciation for your leadership in improved administration, I am

Sincerely yours,

James E. Webb

James E. Webb

CARDINAL O'HARA MEMORIAL LECTURE BY

CHARLES A. BOWSHER

COMPTROLLER GENERAL OF THE UNITED STATES

BEFORE

THE COLLEGE OF BUSINESS ADMINISTRATION
DEPARTMENT OF ACCOUNTANCY

UNIVERSITY OF NOTRE DAME

NOTRE DAME, INDIANA

MARCH 24, 1983

"PERSPECTIVES ON THE FEDERAL BUDGET"

For Release on Delivery
3:30 p.m., Thursday, March 24, 1983

It is a great pleasure to be here with you today. Notre Dame has a much deserved reputation throughout the United States as a center of learning and spiritual inspiration. Coming to Notre Dame is like coming home for me. I was born in Elkhart, Indiana, some twenty miles from here, and visited the campus many times as a young boy. The first time I was here I saw the Notre Dame football team defeat Carnegie Tech in 1938. This game is rather well-known to a lot of old-timers. Notre Dame won the game 7-0 after there was a confusion over downs on one of Carnegie Tech's offensive series. Carnegie Tech, thinking it was third down, ran a play from scrimmage and failed to get a first down. The referee ruled that it had been fourth down. The ball went over to Notre Dame. They marched down the field and scored.

I would like to spend time today discussing two different, but related budget topics. First, I want to offer my perspectives on our current budget situation in the Federal Government and what I think ought to be done to correct it. Then I want to shift gears and describe the improvements I think are needed in the Government's financial management systems.

THE BUDGET SITUATION

In preparing my remarks, I was struck by the relevance of that 1938 football game to the budget situation facing the United States today. We need to pay much closer attention to where we are. Our budget deficits did not exactly creep up on us unnoticed. They have been developing for over 20 years. Recently, however, the actual and prospective budget deficits have become so large that many in the public press speak of an endless river of red ink. In fact, public concern is now so high that last January six former cabinet members, three of whom served under Democratic presidents and three under Republican administrations, formed a bi-partisan coalition to draw the President's and Congressional attention to the fiscal crisis. The document they issued outlining the crisis and its implications drew over 500 supporting signatures from eminent Americans in commerce, finance, law, and education, including the President of this university. I am struck by the diversity of political and economic views represented by these 500 Americans, and I share their concerns.

Like them, I believe that the $127 billion deficit in fiscal year 1982 and the expected deficit of over $200 billion this fiscal year, though to some extent unavoidable because of the recession, are too large. And, what is more troublesome is that even with an economic recovery, in which full employment is reached in 1988, the deficit is projected to be $300 billion.

This predicament does not bode well for continued economic growth, for a sustained recovery from our current recession, and for the health of some of our industries such as automobiles and steel.

In past decades, our country has benefited in a number of ways from economic growth. It has afforded us a rising standard of living which has enabled us to live longer and healthier lives and enjoy more of the material things in life. High rates of economic growth are made possible by high rates of investment in plant, equipment, research and development, and public infrastructure. These investments occur when the savings of the economy are available for private sector uses. Savings are not available for private investment when they are absorbed by the Government to finance its deficits.

This diversion of the savings from productive investment in new plant and equipment has been increasing at an alarming rate. During the 1950s, the Federal budget absorbed less than one percent of personal savings. During the 1960s the total claim on personal savings was only 6 percent. During the 1970s, it climbed to 36 percent and for the first 3 years of the 1980s the absorption was a staggering 71 percent. The forecasts for the period 1983-88 show that only in the final year, 1988, will personal savings exceed the deficit. This absorption rate is a certain prescription for economic stagnation during this decade.

The prospect of large deficits during the 1980s poses a current obstacle to our emerging from the worst recession in 50 years. Because lenders and borrowers must anticipate large Federal claims on the nation's pool of savings for years to come, today's long- and medium-term interest rates, despite some recent decline, remain abnormally high relative to current inflation rates. Today's high real interest rates pose the principal threat to a sustained economic recovery.

Finally, our high real interest rates serve as a magnet attracting foreign funds to our shores. These flows, in turn, lead to an abnormally strong dollar on foreign exchange markets. A strong dollar works to the disadvantage of our export industries and those which compete with our imports.

Because our fiscal problem is at the national level, it is the Federal Government which must devise a solution. This does not mean that big Government is totally to blame for our problems. Those attacking the evils of large Government tend to forget that large Government has also been beneficial for the country.

Leadership at the Federal level was responsible for lifting us out of the Great Depression through creating programs like the Reconstruction Finance Corporation; for mobilizing the nation to achieve victory in World War II; for formulating and carrying out the Marshall Plan for rebuilding Europe, called by Winston Churchill "the most unsordid act in human history"; for providing massive educational opportunities through the establishment of land grant colleges and a host of educational subsidies ranging from the GI bill to student loans; for providing us with a first rate highway system; for inspecting the meat we eat, the medicines we take, the water we drink, and the air we breathe; for stopping floods, bringing electricity to rural areas, and irrigating our deserts; and for striving to ensure equal rights for all.

WHERE DID WE GO WRONG?

If large Government had many past successes, how then did we work ourselves into the present fiscal crisis?

As I noted, our fiscal problems are not of recent origin but have been developing in varying degrees for the past 20 years. It occurs to me that over this period several events contributed to producing our current state of affairs.

The Great American Inflation

Almost 20 years ago, we decided to fight the war in Vietnam without putting the U.S. economy on a wartime footing. We attempted to fund the war, maintain the social programs embodied in the Great Society, and, at the same time, not reduce the standard of living of our citizens. This effort at war and social justice was financed in ways which set in motion the great American inflation--an inflation which, fueled by the oil crises of 1974 and 1978, has bedeviled our economy for a decade and a half and strengthened the effects on the budget deficit of the indexation of entitlement programs and our ability to raise tax revenues.

A Change In Budget Priorities

An examination of the changes in the Government's spending and taxing priorities sheds additional light on what has happened. Since the end of World War II, and especially since the 1960s, the growth of social insurance and entitlement programs has increased sharply. In 1960 we spent 28 percent of our budget on income security, social services, retirement benefits, and the like. By 1972, this spending had grown to 45 percent, and in 1982, to about 50 percent. This is almost a doubling in only two decades.

The increases in expenditures for these programs can be attributed to the way in which they are indexed to offset the effects of inflation, by changes in eligibility criteria, and by changes in the number of participants in each program. We, in GAO, found that between 1970 and 1977 indexing accounted for about half of the spending growth. Of somewhat less importance was the open-ended nature of these entitlement programs. While the Congress sets the standards of eligibility for the programs, it cannot directly control the rate of participation in them. As a result, total spending can vary dramatically without any congressional action, even in the absence of inflation and indexing. It is the rapid run-up in these costs which has given rise to the widespread concern that the budget may be out of control.

When the Congress first indexed these entitlement programs, there was a belief that maintaining real benefit levels for retirees and others was both noble and affordable, and should be removed from the political process. At the time, the U.S. economy was experiencing low rates of inflation. Our economic performance during the last 5 years has not been so good. The growth in our national productivity has declined markedly, inflation has frequently been in the doubledigit range and our economy has stagnated. In per capita terms, our real income has actually declined. Yet, this decline has not been shared to an equal extent between those who receive entitlements and those who do not.

In addition to entitlements, interest costs on the national debt have also soared. In 1970, net interest payments were a little less than 7 percent of total Federal expenditures. They increased to a little less than 9 percent by 1980 and, in 1982, they consumed over 11 percent of Federal expenditures. This growth in interest payments is the product of a number of factors, including the recent large deficits, debt financing policies of the Treasury, and inflation, which drove interest rates to 100-year highs.

One of the political themes of the 1960s was fiscal federalism, or revenue sharing. This translated into a program in which the Government redistributed tax revenues among the various States and localities. In 1960, these grants were almost 8 percent of Federal outlays. By 1970, they reached 12 percent of total Federal expenditures, and by 1980 they had risen to about 15 percent.

In view of the fact that social programs, interest, and aid to State and local governments grew as a share of the Federal budget, something had to give. After peaking at 64 percent during the Korean conflict, defense expenditures declined to 48 percent in 1960, 36 percent in 1970, and 23 percent in 1982.

The overall result of these changes has been enormous growth in Federal outlays due largely to the increasing role the budget has come to play in redistributing income among the population.

Finally, we have seen major changes in the sources of Federal revenues and an inability of total revenues to rise as a proportion of GNP due to a combination of tax rate cuts and erosion of the tax base.

In 1950, personal income taxes and corporate profit taxes provided 70 percent of total Federal revenues with each contributing about equal shares. Social insurance taxes, on the other hand, contributed about 12 percent of the total. Three decades later, nearly one-half of all Federal revenues were derived from the personal income tax, nearly one-third from social insurance taxes, and about 12 percent from taxes on corporate profits. The increase in the relative importance of social insurance taxes is due primarily to the fact that Social Security, the largest of these programs, is self-financing. Its revenues must grow by roughly the same amount as its expenditures have grown.

Despite these shifts in the relative importance of various revenue sources, for the past 12 years total Federal revenues have been a fairly constant proportion of GNP--ranging between 18-1/2 and 21 percent. In 1983, they are projected to be at the low end of this range. Because tax revenues have not kept pace with the growth in Federal outlays, we have had a long string of deficits.

The Picture That Emerges

What picture emerges from the chain of events that I have described?

Since the end of World War II, we have seen a change in our national priorities. For better or worse, we decided that primary responsibility for various social problems related to old age, health, and disability should be assumed at the Federal level. In dealing with these problems, we decided to establish real benefit levels by indexing. In doing so, we failed to anticipate the great American inflation, itself a legacy of the Vietnam War. This inflation led to a rapid run-up of expenditures to support the programs and for interest on a growing national debt to finance such programs. This, in turn, made it difficult to raise revenues to finance other programs.

Recently, a series of decisions to reduce tax rates and index the tax system, as well as increased real outlays for rearmament coupled with a reluctance to reduce spending for entitlement programs, has only served to exacerbate the fiscal crisis.

WHERE DO WE GO FROM HERE?

Despite the merits of the views motivating the changes in policy that have taken place recently and over the last several decades, their effect on the Government's fiscal health poses a real threat to our economy. And, because of our interdependence with the economies of the rest of the world, the spectre of enormous deficits and a continuation of high real interest rates is even more alarming.

As Helmut Schmidt, former chancellor of West Germany, noted in a recent essay on the state of the world economy, "The world economy is in undeniably bad shape. But it is not incurable. Our problems are man-made, and they can be solved by man. But this means that governments must face up to their responsibilities. We cannot afford to believe in the invisible hand of the market so much that, as the American columnist Joseph Kraft puts it, we 'prefer not to acknowledge the visible hand of explicit policy'. The 'self-healing powers of the market' cannot take care of all our problems." Mr. Schmidt went on to say, "The United States will have to take the lead in the required reduction in world interest rate levels, if only because of its importance in the world. It accounts for about 40 percent of the national product of all OECD countries, around two-thirds of all official exchange reserves are held in U.S. dollars; and about three quarters of Euromarket loans are denominated in U.S. dollars and reflect American interest rates."

We must give the highest priority to putting our fiscal house in order. Our options for responsible action include raising revenues and reducing expenditures, and, within the expenditures area, to containing spending growth for both entitlement and defense programs.

Social programs and entitlements

I indicated that indexing social programs and entitlements and their open-ended nature were the main reasons for their soaring costs during the past decade and the widespread concern that the budget may be out of control.

Social Security, by far the largest of our social insurance programs, has been self-financed. Therefore, it could not directly contribute to deficits in more than a temporary way. Nevertheless, it has had an important indirect effect. If one accepts the premise that the Government tax claim on our national output should be limited if we are to achieve sustained economic growth, increases in taxes for Social Security may come at the expense of reductions in tax revenues from other sources, and this is what has happened. The ultimate result is that even in the case of Social Security, maintaining real benefits that are self-financed can indirectly contribute to deficits. For partially self-financed entitlement programs and those financed out of general tax revenues, the effect on the deficit of maintaining real benefit levels is more direct. I have to conclude that, regardless of whether these programs are self-financed or not, the real question is, can we continue to afford maintaining the level of benefits promised in better times than we are currently experiencing?

Our current economic circumstances, unforeseen by the Congress when it indexed these programs, warrant some modification in the indexing formulas, a more systematic review of eligibility criteria, and relatedly, more stringent means tests to assure that the poor are adequately protected while at the same time modifying participation by certain program beneficiaries whose own source income levels are sufficient to maintain a decent living standard.

Defense

In his March 23rd address, President Reagan outlined the buildup of both strategic and tactical forces by the Soviet Union; a buildup that has continued unabated for two decades. Like the President, I believe that the Soviet Union possesses a formidable arsenal of weapons which constitutes a threat to the security of the United States. I also believe that a strong U.S. defense posture is the best deterrent to a super power confrontation. However, I believe that we can maintain a formidable and credible defense posture without engaging in the greatly accelerated defense buildup currently proposed.

This buildup must be slowed if we are to reduce the federal deficit. Also, the very large increase in our procurement demands may place severe strains on the Nation's defense industrial base. Federal officials must carefully consider current and future industrial capacity with an eye toward saving taxpayer dollars when planning buys, and setting procurement quantities and schedules. A realistic and stable acquisition program over a period of years will yield enormous benefits to our defense posture and help our budget situation.

At the same time, the Defense Department should recognize that the costs of maintaining and operating the complex equipment it is procuring, and proposing to procure, will place a strain on future defense budgets. We will soon find that adequately supporting what we have recently purchased and continuing the high level of investment in all new equipment will result in our doing neither well. We must recognize that maintaining the weapons of the future may require eliminating some weapons purchases today. We simply cannot afford to put into production virtually all weapons developed under the Carter-Ford-Nixon administrations. We must not buy the weapons that have technological problems, or the weapons that have languished so long in the development stage that they simply grew obsolete with rapidly advancing technology. The savings from such actions would be primarily in future years. But, particularly in the defense procurement area, we must consider carefully the future costs of today's decisions.

In addition, the possibility of breakthroughs on the international and diplomatic fronts that could limit strategic and conventional forces should be fully explored.

Taxation

Finally, we need to reexamine the revenue side of the budget and stop the erosion of the tax base. There has been an increasing tendency for individuals and businesses to obtain subsidies through the Federal tax system by having a portion of their income exempted from taxation. Tax shelters, loopholes, and tax expenditures should be reexamined, as I believe Senator Dole and others are currently doing in the Congress. While these exemptions are justified on worthy social or economic grounds, there is increasing evidence that they fail in many cases to accomplish their stated objectives. In those cases, we merely forego a source of tax revenue to seek behavior that would occur without the subsidy. Such exemptions also have the potential to lead to serious misallocations of our scarce economic resources. They also add complexity to our tax code that leads to undermining what was once the best voluntary tax system in the world. It is essential that the public have confidence in the integrity, equity, and effectiveness of our tax system. Otherwise, billions of dollars will continue to be lost because of taxpayer noncompliance.

The steps I have outlined to curb the growth in entitlement and defense programs and to raise tax revenues are reasonable and responsible in their own right. And, they will go a long way toward eliminating the massive deficits projected for the future, and eliminate the specter of continued high interest rates and stagnant economic growth both here and in the rest of the world.

FINANCIAL MANAGEMENT PROCESS IMPROVEMENTS

Let me now shift from the problems associated with the imbalance of the Federal budget to the financial management processes which support the formulation and execution of the budget.

One of the key functions of financial management is allocating the resources over which the Government has command. This process involves, to a large extent, assessing trade-offs among competing political goals. But, in order for the choices to be informed, it is essential that the information used by policymakers be as accurate and reliable as possible so that the costs of the choices are clear--especially the full long-term cost of major proposed programs. In order for such choices to be well-informed, we need much improved financial information.

Today's Federal decisionmakers are working with financial management systems that were designed for a bygone era. Many of these systems date back to World War II and the 1950s. These officials use planning, budgeting, and accounting systems that are not well integrated. The individual systems have become cumbersome as more and more requirements have been added to meet expanded needs for information. We must streamline and modernize these systems to meet the requirements of those decisionmakers who must address the tough and complex issues associated with the budget dilemmas I have described.

During the past two decades, both the executive branch and the Congress have taken steps to strengthen their budgeting process. In the early 1960s, Mr. McNamara established a planning, programming, and budgeting system for the Defense Department. The defense budgeting system has been adapted to each administration's policy and management needs and, today, still represents the most comprehensive, integrated approach to supporting decisionmaking in the Federal Government. But this system is now 20 years old, and there are many areas in which it can be improved. In other Federal agencies, the systems are generally not as comprehensive and integrated.

In the 1970s, the Congress added a new budget process on top of the existing authorization and appropriations processes so it could better handle the overall Federal budget. To support and carry out the new budget functions, the Congress created new budget committees and the Congressional Budget Office. These new processes increased the demands on the systems at the same time that the issues being addressed were getting more complex and the budget itself became more important to policymakers. So the Congress also has found that its processes need to be streamlined and they are working on new approaches.

Accounting systems in the Federal Government have a different history. Prior to World War II, accounting was centralized in the General Accounting Office. During the build-up for World War II, the disbursement and accounting systems had to be decentralized quickly. After the war, at the recommendation of the Hoover Commission, legislation was passed that formalized the decentralization to the executive departments and agencies, with GAO providing guidance and retaining responsibility for their review and audit. Generally, separate systems were created for payroll, administration, and program operation. Some attempts have been made to consolidate and integrate systems at high levels, but even these have not been integrated with budgeting. So today we find hundreds of accounting systems with narrow scopes and few linkages to other systems.

Auditing, evaluation, and oversight have also experienced major expansions because of policymakers' growing expectations about their capabilities. Decisionmakers want analysts doing review work to give them clear, specific recommendations for ways to save money, manage better, and get better results from the Government's activities. They also want to be told very generally how each agency is being managed. But reviews have tended to be narrow in scope, dealing with only a single aspect of an agency's activities. Therefore, it is often not possible to give overall assessments or make broad proposals on entire programs.

Thus, current financial systems of the central agencies and the many individual departments have grown up in an ad hoc fashion. Each was put in place to meet some perceived need at the time. But this evolution has yielded a patchwork set of arrangements characterized by gaps, hurdles, and failure of the parts to mesh well with each other. This has degraded the efficiency and effectiveness of the system as a whole, which can be made to function only through virtually superhuman efforts by the participants in the process.

We need to move to a broad concept of financial management in the Federal Government that encompasses the processes and functions associated with acquiring, managing, deploying, and accounting for the Federal Government's financial resources. We need systems that will assure us that, to the maximum practical extent, these financial resources--and the real resources they represent--are acquired and used lawfully, efficiently, and effectively to achieve purposes of commensurate value to society. We need to ensure that policy officials and the public get clear, concise information on the Federal Government's stewardship of financial resources. I believe we can do a better job of reporting on as well as managing the resources, and I will be working with the Congress and the Executive Branch to develop a strategy and plan to create the needed systems.

CONCLUDING REMARKS

In 1975, then President Ford, when delivering his first State of the Union Address, said "the State of the Union is not good." He went on to say, "Million of Americans are out of work. Recession and inflation are eroding the money of millions more. Prices are too high and sales are too slow. This year's Federal deficit will be about $30 billion; next year's probably $45 billion. The national debt will rise to over $500 billion."

We must, in 1983, once again realize and acknowledge that the financial health of the Government, as well as the economy, is not good. Though inflation appears to be under control, we have paid a heavy price; right now over 10 percent of our labor force is out of work. Our Federal budget appears out of control. Even in real terms, the $300 billion deficits projected in a fully employed economy make the deficits that President Ford was worried about pale in significance.

I have briefly outlined the steps I believe should be taken to put our fiscal affairs in order. We must reduce the deficit through a combination of reductions in the growth in entitlement and defense programs and increase either tax rates, the tax base, or both. The burdens imposed by these steps will involve sacrifices from all of us. In Government, we need a bi-partisan recognition of the problem and a resolve to deal with it. We also need the development of a consensus of agreement among public officials and the full spectrum of private interests on an equitable allocation of sacrifice. Without action we are faced with a continuation of unprecedented large deficits, high interest rates, a worsening trade balance, an enormous drain of savings from supporting private capital formation, a relatively stagnant U.S. and world economy and, at best, no improvement in our standard of living.

The consequences of not coming to grips with our budget problems are so serious that I am certain we will find the ways to resolve it. Our Government has faced problems of similar magnitude in the past and has dealt with them. I see signs of a developing bi-partisan recognition and resolve to deal with our problems. I believe that we, like Notre Dame in that 1938 football game, can make the most of this most fortunate turn of events.

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April 25, 1983

APR 27 '83

The Honorable William S. Cohen, Chairman
Subcommittee on Oversight
of Government Management
The Committee on Governmental Affairs
SD-346
Washington, DC 20510

Dear Senator Cohen:

The purpose of this letter is to provide response to the individual questions of your letter of April 7, 1983.

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   It was the intent of the Government Procurement Commission to establish the Office of Federal Procurement Policy as a leader in the reform and standardization of government procurement practice and, subsequently, serve as the executive manager of such policy and practice to be sure that the government's program was alive and responsive to evolving needs with coordinated understanding throughout the using agencies. It was unfortunate that the necessary authority was compromised by the amendments of 1979, and it is therefore doubly important that the office should be reauthorized at this time and made a permanent part of the government's management structure.

2A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   As indicated above, in order for the Office of Federal Procurement Policy to perform its intended role, the authority provided in the original legislation should be restored with the additional specific mandate to achieve a uniform federal procurement system and provide the necessary leadership to assure its adaptation to all government purchasing.

2B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

The strongest reason that the government does not have a single procurement system at the present time is that procurement people in different agencies like to assert their independence by devising unique procurement procedures. Obviously, there is little justification for the government to use different buying procedures for different programs. There is, therefore, a need for one authority to adjudicate differences between agencies and monitor the uniform application of the best procurement system that can be adapted from all those that are currently in use. This would dictate the need for a regulatory authority by the Office of Federal Procurement Policy.

2C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Yes. As a part of its responsibility to keep the procurement system modern and abreast of changing requirements, it will be necessary to amend the Uniform Federal Procurement System from time to time. Accomplishing such changes by testing them in actual practice is a logical procedure.

2D. Are there other authorities which you feel the OFPP should have?

The government sorely needs a senior administrative and auditing authority to assist it in its make-or-buy decisions. The government's policy of relying on the private sector for supplies and services is more frequently honored in the breach than in its observance. There can be little question that this occurs because the case for enlarging internal government operations is most frequently made by people who have a vested interest in the enhancement of job qualities and the enlargement of government. The OFPP is ideally situated to surveil the make-or-buy decision-making process and test all such recommendations against the established criteria of government policy. In a time period of overwhelming government deficit expenditures, the prioritizing of government programs should not be confused by the difficulty of evaluating noncomparable economic measurements and government facility and civil service recommendations.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

   There is some merit in a time of innovation and introduction of the new procurement system to permit some flexibility to the Executive Branch. At some point it would be desirable to have a complete procurement statute, but this might more appropriately be accomplished at the end of the five-year term that you are proposing for the renewal of the legislation, if that continues to be your objective.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   It would have been more effective without the constraints of the 1979 amendments, but since that aberration is now behind us, the expiration of the present authorization in 1983 provides an opportunity to reassert the need of our government, as determined by the Congress, to establish a uniform federal procurement system. It is patently ridiculous to tolerate the inefficiency of multiple procurement systems in a government that continues to become an ever-increasing force in our industrial society.

Thank you for the opportunity to respond to your questions. You have our best wishes for the resolution of the important issues before your subcommittee.

Sincerely yours,

Richard E. Horner

kva

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APR 22 '83

April 19, 1983

Subcommittee on Oversight of Government Management
Committee on Governmental Affairs, SD-346
Washington, D. C. 20510

Gentlemen:

This is in response to Senator William S. Cohen's letter to me dated April 7, 1983 regarding legislation which would reauthorize the Office of Federal Procurement Policy for an additional five years.

The following answers are in the sequence of his questions as stated in his letter:

1. Yes. I believe the Office should be reauthorized for a minimum of five years and consideration should be given to making it permanent.

2A. The authorities given to OFPP under the 1979 amendments to the Act were tailored to meet the requirements of specific statutory assignments. OFPP has successfully completed those assignments. The authorities provided in the original OFPP legislation now should be reinstated so that OFPP can implement the UFPS and continue to provide strong leadership in procurement reform.

2B. Yes. OFPP should have regulatory authority again. This is not to say that OFPP should undertake a large scale effort to develop regulations as this is an agency function but it should have regulatory authority to resolve differences among agencies and to prescribe regulations in case the agencies fail to issue necessary regulations.

2C. Yes. OFPP should have testing authority as proposed in the UFPS. There is a need in the procurement community for testing innovative procurement techniques. These tests may require waiver of existing statutory provisions and, therefore, there is a need to include a provision for testing in the statute. More selective application of socio-economic thresholds is only one area in which OFPP should undertake a testing program. Examples of other needed tests are using commercial practices to procure commercial products and developing simplified purchasing techniques for specific commodity groups under specific dollar ceilings.

April 19, 1983
Page 2

2D. Yes. Providing the Administrator of OFPP with regulatory authority and not subjecting that authority to concurrence by the Director of OMB should give the Administrator sufficient authority to effect procurement reform.

3. Yes. The principles enunciated in the Executive Order are fundamental to sound procurement and should be included in statute in order to ensure that procurement reform is pursued.

4. If the question is "did OFPP accomplish the specific tasks assigned to it by the 1979 Amendments to its Act," the answer is yes. However, if you mean "can OFPP effectively provide the leadership and policy direction required for procurement reform under the authorities of the 1979 Amendments," the answer is no. It is necessary for OFPP to have regulatory authority, as well as policy direction, in order for it to function effectively.

I trust these answers will help you in your discussion during the hearing scheduled for April 27, 2983.

Yours very truly,

Peter D. Joers

PDJ:bgm

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April 19, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Re: **OFPP Reauthorization**

Dear Senator Cohen:

As you begin hearings on the reauthorization of the Office of Federal Procurement Policy (OFPP), I am pleased to write in support of the reauthorization of a strong OFPP.

As a former Administrator of OFPP, I was most pleased to see that both you and Chairman Brooks have introduced legislation which, if enacted, would breathe new life into OFPP.

At a time when procurement reform and procurement policy issues are of critical importance to the effective expenditure of the American tax dollar, it is essential that an organization such as OFPP exist as an independent body within the Office of Management and Budget to direct, coordinate and guide government-wide procurement practices and lead any efforts at procurement reforms.

Failure to reauthorize OFPP would undermine the progress to date on implementation of the recommendations of the Commission on Government Procurement, would remove the impetus for interagency cooperation fostered by OFPP, and would feed the forces of dissention which seek to irreparably divide the agencies in their push for development of uniform procedures and practices for the civilian and military agencies. The catalyst of an OFPP can serve to advance the movement on competition and bring procurement executives together on issues like personnel standards, strict liability for government contractors and the FAR, and small business reforms. Without such an organization, the momentum for reform and regulatory improvements in procurement practices will be lost. For your consideration, I am enclosing a copy of a speech that I gave in Denver last fall in support of a strong OFPP.

With respect to the specific items raised in your letter of April 7, 1983, I am pleased to provide the following responses:

1. Q: Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

Answer: The Office of Federal Procurement Policy should be reauthorized for a minimum of five years. There is much work to be done to fulfill the ongoing responsibilities of that office to serve as a developer, coordinator, initiator and director of federal procurement policies and practices. In order to be effective in its relationships with the civilian and military agencies, it is essential that OFPP be free to structure its policy initiatives and regulatory initiatives free of any threat that an agency will disregard them with the knowledge that OFPP will be out of business in a few years. Continuity is thus critical to achieve improvements in federal procurement practices.

2. Q: The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the director of the Office of Management and Budget was authorized to rescind any rule or regulation which is inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again at issue.

a. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

Answer: No. If OFPP is to serve truly as the principal procurement office for the Federal Government, with authority to direct, coordinate and implement procurement reform, it must have greater authority than simply the policy issuance authority granted in the 1979 Act.

b. Should the OFPP have regulatory authority as originally provided in the OFPP Act of 1974?

Answer: Yes. It would be in the best interest of OFPP, of the Federal Government and of the procurement community -- both public and private alike -- if regulatory authority were restored directly to OFPP. Although the precise language of the 1974 Act would certainly be acceptable, it might be advisable to strengthen it or to clarify the authority of OFPP to resolve differences among agencies with respect to regulatory developments. For example, it should be made clear that the Administrator of OFPP is the final arbiter of any differences arising from FAR Council deliberation on the federal acquisition regulation or any other disputed procurement policy matter.

c. Should the OFPP have testing authority as provided in the proposed Uniform Federal Procurement system to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds under case-by-case supervision from the director of OMB and the Congress?

Answer: In my view, there is no need to provide OFPP with additional statutory testing authority. Within the overall rubric of directing procurement policy, it will have the authority to direct testing, where needed. Indeed, testing of innovative procurement practices has been going on in a number of agencies for years. Each agency head has parallel discretion to be creative in its approach to procurement requirements. Moreover, the President's Executive Order 12352 of March 17, 1982 encouraged such action by agency heads. There is thus no need to put testing authority in this statute. By including such language, it may well send the wrong signal to the agencies, deflecting them from proceeding with dispatch to push forward with more comprehensive procurement reforms such as the FAR and refinements to contracting-out policies.

d. Are there other authorities which you feel the OFPP should have?

Answer: In addition to explicit regulatory authority, the OFPP should have the authority to establish its annual budget and to hire and fire its own staff, up to a predetermined ceiling, without clearing such matters through OMB. Finally, OFPP should have the authority to request that the Justice Department intervene in litigation which challenges the compliance of an agency with any OFPP regulation or directive.

3. Q: Should Congress proscribe any management responsibility as set forth in the first section of Executive Order 12352 of March 17, 1982?

Answer: It would seem hardly necessary for Congress to enact in statute the management responsibilities proscribed in Executive Order 12352. Management is best left to the executive branch, giving them flexibility to respond and make management decisions consistent with the overall policy of the Federal Government, as articulated by the Congress.

4. Q: Has the OFPP in your judgment been able to function effectively in fulfilling its statutory mandate?

Answer: Prior to 1979, OFPP was able to make significant progress with respect to fulfilling its mandate to serve as a policy initiator, implementor and director. Since 1979, however, the absence of regulatory authority and the lessening of support from the Director of OMB has made it more difficult for OFPP to be assertive and to be respected by the principal agencies. I believe it is in the interest of the government and the private sector for OFPP to be returned to its premier, directive role in the procurement arena.

Conclusions

Some final observations about the reauthorization of OFPP. First, it is critical for Congress to act quickly to pass this legislation. No further delays in congressional deliberations this year should be tolerated. The time for action is now.

Second, regulatory authority is also a key element to OFPP's continued survival. Without this authority, it would appear that there is no hope for the organization to recover its premier position in the contracts arena, nor to hold agency procurement officials accountable for their practices. Lastly, I would hope that OFPP could continue to rely on the support of the Administrator of the Office of Management and Budget in its efforts to achieve government-wide procurement reform. In my view, OMB, with its program review and oversight role, can be an effective partner in OFPP's successful achievement of its mission.

Thank you for the opportunity to provide these comments to the Subcommittee.

Sincerely,

Karen Hastie Williams

Karen Hastie Williams

Attachment

CROWELL & MORING

Statement of
Karen Hastie Williams
Crowell & Moring

Before the NCMA Fall Symposium
Denver, Colorado
October 14, 1982

A Strong OFPP: The Key to Reform of Federal Acquisition Policy

Mr. Chairman and distinguished guests, let me first express my deep appreciation for the opportunity to speak today on the new proposals for procurement reform. I come to this symposium not only as a former government official, but also as an active practitioner in the government contracts bar, representing a wide range of firms -- defense systems manufacturers, small R&D firms, as well as companies that do business primarily with the civilian agencies. Formulated from the perspective of both experiences, I want to share with you my thoughts on the Uniform Federal Procurement System Proposal and the role the Office of Federal Procurement Policy (OFPP) can and must play in efficient procurement policy reforms. In the available time, I will only be able to highlight areas of concern, but I will be pleased to respond in greater detail to your questions.

Ken Jackson has just presented a very logical case for supporting the UFPS. I will focus my remarks today on the problems I see emerging from the proposal and on problems of any reform effort in which OFPP fails to assume a strong leadership position in support of centralized procurement policy.

Of course, the opinions I express today are not necessarily those of my firm or our clients. The problem areas with respect to the UFPS and OFPP fall into three categories -- with varying degrees of impact on the reform question: philosophical, administrative and practical. Before addressing these areas in detail, I would like to pause to discuss the procurement environment into which the UFPS proposal was submitted this year and in which we find ourselves today.

The Procurement Environment

Federal procurement of goods and services is a $134 billion business -- big business, even by Fortune 500 standards. The procurement budget reaches every federal agency, employs tens of thousands of federal workers in over 18 million actions a year, and involves about one-fifth of the total federal budget.

The system through which these dollars flow from the Treasury into the private sector is very complex and is currently overloaded with layers of rules, regulations, procedures and forms, often reflecting disparate signals to potential contractors. Although the potential economic gain for government contractors is quite large, the process of contract selection, award and administration often requires significant allocations of time and such wide areas of knowledge -- procurement, finance accounting, marketing -- that many companies simply refuse to do business with the government. Their attitude can be summed up this way: "why put ourselves to the expense -- in terms of dollars and manpower -- of developing a proposal whose chances of success are, at best, unknown and probably slim." As a result, the government loses to the commercial sector many good suppliers of all sizes -- small and large. For example, Hewlett Packard, a large California-based electronics firm, refuses to sell to the government any equipment other than that which is commercially available to other customers. In the words of OFPP, "because the procurement process is cumbersome, costly and frustrating [, ...] it has discouraged competition and contributed to the erosion of the industrial base." Proposal for a Uniform Federal Procurement System (issued by OMB on February 26, 1982), at i.

Having made that statement, however, and having stated that enough studies have occurred over the past ten years, and that it is now time for fundamental change, we now are faced with legislative and management proposals which comprise the UFPS that appear, I regret to say, to emasculate the current strengths of the OFPP and leave it in a debilitated state.

OFPP's Philosophical Dilemma

There is no question that the federal procurement system needs reform. The current debate focuses on the appropriate philosophy to shape those reforms.

The main schools of thought advocate either decentralization, on the one hand, or centralization, on the other hand. Under the decentralization scenario reflected in the dual statute approach of the UFPS, a procurement executive in each agency sets standards for the internal process and generally oversees the policy operation of that system, tailoring policy directives to agency missions. Procurement authority itself is still vested in the agency head and delegated through the agency's operating channels. The Department of Defense in particular retains a significant degree of procurement policy autonomy under an Armed Services statute, while the civilian agencies follow separate statutory guidance.

Under the UFPS proposal, OFPP sits in a "coordinating" position, devoid of substantive authority to push forward the policy directives it issues. Relying on a coordination role alone would appear to leave OFPP extremely vulnerable to hard line recalcitrance on the part of one or more agencies and create immovable roadblocks to meaningful reform efforts. This decentralized approach is reflected in both the February and April management and legislative proposals for the UFPS submitted to the Congress by OMB. It is ironic that these communications were both signed by the Deputy Director of OMB, rather than the Administrator of OFPP, and reflected an erosion of authority within an OMB agency at a time when OMB's regulatory and budget clout was clearly on the rise.

By contrast, a centralized management approach would invest OFPP with strong management and regulatory authority to support its policy role for both civilian and military agencies. In developing policy directives, it would consult with the agencies and the public to develop a broad spectrum of views. Once issued, a policy directive would be implemented authoritatively with management and regulatory follow-through directed by OFPP according to the provisions of a single statute.

Let me be clear. I do not believe that a centralized policy approach requires encroachment into agency operations. Indeed, OFPP should not be trying to run day-to-day operations or to establish contractor selection criteria for the Defense Mapping Agency or Agriculture's Forest Service, for example.

But, with the authority to "resolve" rather than "facilitate resolution" of conflicting views among the agencies about a proposed regulatory change, OFPP could then establish a regulation to guide both agencies in establishing, let's say, a priority for commercial product buys. These are just a few of the areas in which this fundamental difference in approach is manifested and where I believe the UFPS is seriously flawed.

In sum, a threshold decision for the Congress and the professional procurement community would appear to be which approach, or variation thereon, is best for the country and best for progress in procurement.

OFPP's Administrative Dilemma

Turning from questions of philosophy to questions of management and administration, the UFPS proposals would reduce the OFPP to little more than a housekeeping function. This conclusion is supported by several features of the proposals. First, no statutory authorization level is proposed in the legislative package. Presumably, "such funds as are necessary" will be authorized and appropriated. But who sets the dollar level?

Under current law, OMB would set the level since funds for OFPP are now provided within the OMB/general government appropriations bill. An independent OFPP administrator certainly stands a better chance of successfully defending efforts to cut back on budgetary levels, armed with a statutory authorization level, than does an administrator left to the largesse of an OMB director -- who may or may not appreciate the importance of procurement policy issues or the importance of OFPP's contribution to efficient government spending policies.

Additionally, in spite of statements to the contrary about the issues being over-studied, a 30-month testing period is proposed in the UFPS. The introduction of this testing period suggests that the current Administration has concluded that more study must precede any fundamental change in the procurement system -- a conclusion of dubious heritage.

Finally, there is no guarantee that any agency actually will follow-up with the testing of competition concepts, commercial practices or the raising of applicable thresholds advocated in the UFPS legislative proposal. As a result, there is little incentive for agencies to take this proposal seriously. Indeed, they may not have to change their current procurement practices in the slightest if they chose not to act.

When will we make an end and move forward with procurement reform? When will we support a good, strong A-76 policy on contracting-out? When will we move to develop realistic size standards for small businesses that reflect actual business practices in industry? No clear answer appears to be emerging.

OFPP's Practical Dilemma

From a practical standpoint, OFPP now faces an uphill battle to achieve procurement reforms. Divided views exist everywhere. Industry is divided. The associations have divergent positions on the new proposals. The agencies are also divided in their support for or opposition to the proposals.

Members of the Bar have voiced grave concern about where the new "competition" will lead us. New legislative proposals to redefine "competition" are legion. Will we indeed get more competition or will we reduce competition in the government marketplace and get the two-favorite-vendor, "old boy" network back with a vengeance?

In a recent Federal Bar Journal, my colleague, Dale Oliver, has analyzed this question and reached some enlightening conclusions which are worthy of your consideration. See D. Oliver, "A Critical Analysis of OFPP's Proposal for a Uniform Federal Procurement System: Reducing Competition in the Government

Marketplace," Federal Bar News & Journal, March, 1982. (The full text of the article is attached to my remarks.)

Conclusion

If there ever was a time when OFPP should take the reins of procurement policy power, it should be now, at a time when OMB's star has soared and budgetary considerations are so key to all major policy and regulatory issues. As an arm of OMB, OFPP should be in a posture to benefit from the glow emanating from the OMB star.

It is in the interest of all procurement professionals that OFPP take a more activist role. OFPP was established in 1974 as a catalyst for change. It can either shape the future or be shaped by it.

As the procurement reform debate continues and Congressional Committees carefully scrutinize the new proposals, I would hope that OFPP uses the time wisely to address some of the substantive policy issues of major import today. Many existing policies that are already in place are being eroded by piecemeal legislative and administrative action. For example, the contracting-out policy set out in OMB Circular No. A-76 and ratified by President Reagan's recent Executive Order 12352 is under seige. Although the Senate initially took a much more supportive role, in the end, the House prevailed and slapped a one-year moratorium on contracting for firefighting services and a six-month moratorium on cost studies within the Defense Department.

It is incumbent on OFPP to work with the Members of Congress to educate them about procurement policy issues and respond to their concerns. The active support of OFPP is a necessary complement to private sector initiatives in this area. Such an opportunity for OFPP to bring together private and public sector concerns in support of a strong contracting-out policy should occur on a regular basis.

Additionally, the professional procurement community, in the public and private sectors alike, is outraged by the heavy-handed methods used by the Inspectors General and audit teams to challenge contractors' operations and to second-guess the decisions of contracting officers. This is not a healthy situation and does little to promote industry/government cooperation or to reduce adversarial relationships.

In the same vein, there is widespread concern that the administrative and legislative push for government-wide debarment in the absence of appropriate due process protections and opportunities for reciprocal government-wide exoneration will lead to an even greater erosion of the industrial base and flight of suppliers/contractors from the government arena. The recent OFPP policy letter on this subject has raised serious doubt as to the interest of OFPP in assuring an equitable opportunity for contractors to be heard prior to such adverse agency actions.

One area where I am pleased to observe a strong courageous stand in the UFPS is unequivocal support for the highest degree of professional integrity among the procurement community. Under

FAI's leadership, the continuing efforts of OPM to downgrade and deprofessionalize the procurement specialists have been uniformly criticized by public and private sector representatives. I hope that Dr. Devine heeds these warnings and defers the promulgation of new standards until clear guidelines to determine appropriate qualifications can be established. If the Administration follows through on its plan to remove FAI from OFPP, such efforts would appear to be counterproductive, in view of the added discretion given in the UFPS to the contracting officer.

OFPP stands at a crossroads in its history. Industry, the agencies and Congress have the opportunity to champion independent, centralized policy development as the keystone for procurement reform. I believe that a strong OFPP is pivotal to such a development and that only with a strong OFPP to balance the interests of the public and private contracting community can we hope to improve and streamline the federal procurement process.

Thank you for the opportunity to share my thoughts with you. I will be happy to respond to whatever questions you may have.

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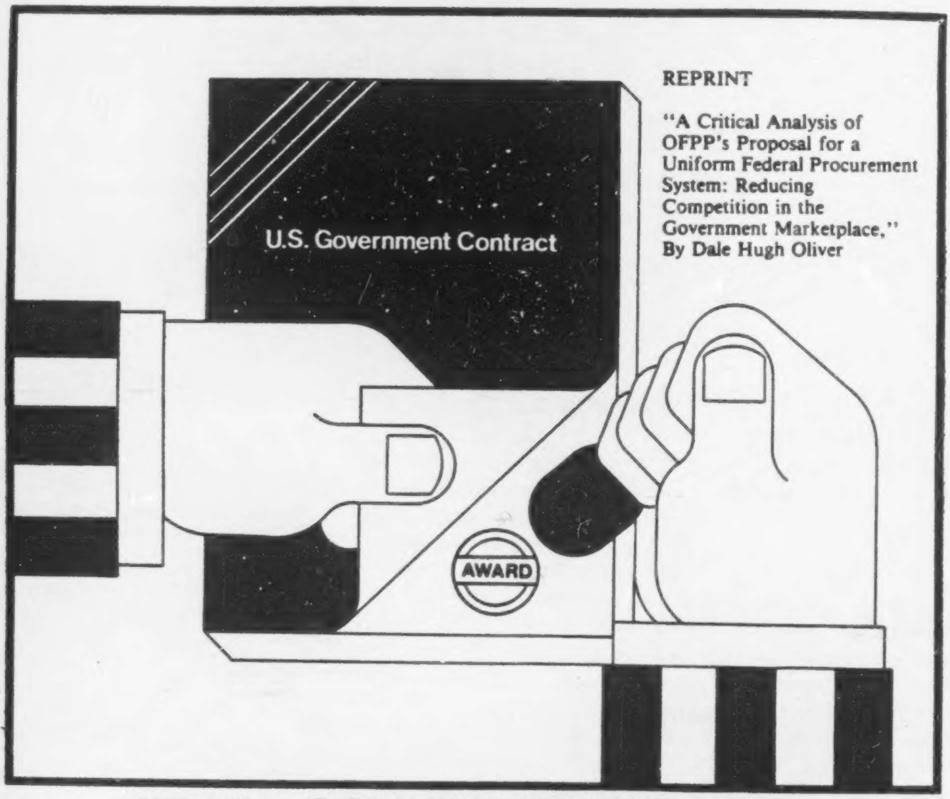

REPRINT

"A Critical Analysis of OFPP's Proposal for a Uniform Federal Procurement System: Reducing Competition in the Government Marketplace,"
By Dale Hugh Oliver

GOVERNMENT CONTRACTS ISSUE

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A Critical Analysis of OFPP's Proposal for a Uniform Federal Procurement System:

Reducing Competition in the Government Marketplace

BY DALE HUGH OLIVER

I. INTRODUCTION

Although paying lip service to the benefits of a competitive procurement system, the recent proposal for a uniform federal procurement system proffered by the Office of Federal Procurement Policy[1] undertakes to restructure radically the Government marketplace in a way that will most certainly reduce competition. The statutory scheme proposed by OFPP de-emphasizes the importance of price in Government purchasing and invests vast amounts of discretion in procurement officials to curtail competition. The effects on American industry generally could well be an increase in market concentration and a corresponding reduction in an overall competition.

Editors' Note:

The author and the editors understand that the Office of Federal Procurement Policy expects to issue another proposal that may address some of the concerns cited by the author. It may be issued by the time of this publication. The following analysis is based upon the most current version of the OFPP proposals available at the time this article was prepared late in February 1982.

I. INTRODUCTION

The OFPP legislative scheme proceeds on the professed assumption that Government contracting should be similar in practice to that enjoyed by commercial companies. There are four problems with OFPP's use of this assumption. First, the Government, because it is the Government, is perceived by its citizens as different than a commercial company. A citizen demands a duty of the Government to treat participants in the marketplace with greater evenhandedness and fair play than that same citizen would demand or otherwise expect from a commercial company. Second, the Government is truly different as a buyer—both because of the size of its purchasing power and because of the number of conditions that are exacted from sellers. These conditions have no counterparts in the commercial marketplace. For example, the ability to obtain cost and pricing data pursuant

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to the Truth in Negotiations Act results in tremendous economic power for the Government at the bargaining table. Third, the Government—because it is not a profit-maximizing institution—cannot be viewed as truly concerned with minimizing prices. Greater control over purchasing decisions, therefore, may be required. And fourth, the assumptions of how commercial concerns act in the marketplace, as discussed below, are misperceived by the OFPP and thus incorrectly applied.

The thesis of this article is that the present version of the proposed legislation presented by OFPP is not in the best interests of this country's economic system. This article will examine the departures of the proposed legislation from current statutory constraints and analyze those departures in terms of general principles of economic price theory. The conclusions reached are that the proposed legislation will act to reduce competition by creating oligopolies and will over the long run increase prices paid by the Government.

II. BACKGROUND OF THE PROPOSED LEGISLATION

The operation of a sunset provision contained in the legislation[2] originally creating the Office of the Federal Procurement Policy caused Congress to review the functions, effectiveness, and operations of the OFPP during its first five years of existence. That review led to the passage of the Office of Federal Procurement Policy Act Amendements of 1979.[3] Part of that legislation required that the administrator of OFPP submit to Congress within two years a proposal for a uniform procurement system and the legislative changes required to implement that procurement system. The Act amendments specifically contemplated that the administrator could recommend a consolidated statutory basis for procurement. Interestingly, one of the other changes brought about by the OFPP Act amendments was the articulation of a new objective for OFPP. That new objective declares that one policy of Congress is to promote "the use of full and open competition in the procurement of products and services....''[4] The current proposal for a uniform federal procurement system is the product of the 1979 OFPP amendments.

III. ANALYSIS OF THE CHANGES RELATING TO CONTRACT NEGOTIATIONS AND COMPETITION.

Section 101 of the proposed legislation is a section entitled "Competition."[5] Section 102, a section entitled "Evaluation of Bids," provides for changes in the manner that the Government solicits and negotiates contract awards.[6] The changes expressed in these two sections, and an analysis of the likely effects on competition generally, will be discussed in turn in this section. This analysis will also consider the comments offered by OFPP in connection with its submission of the proposed legislation. Indeed, it is only upon review of these comments that the full meaning and breadth of the proposed legislation can be understood.

A. Removing the Requirement to Maximize Competition

Section 101.(a) states "[e]xecutive agencies shall solicit bids from a sufficient number of prospective sources to insure that the Government's needs for property or services are obtained through effective and efficient competition." The section goes on to define what constitutes "effective and efficient competition." That condition is satisfied, according to Section 101.(a)(2), when at least two bidders respond to the solicitation. Although the legislation refers to efficient competition—a concept which is itself curious—the number of offerors to satisfy this condition is therefore posited as being as few as two.

The current statutes applicable at least to procurement by the military agencies and by the National Aeronautics and Space Administration provide that "proposals shall be solicited from the maximum number of qualified sources...''[7] The regulations applicable to civilian agencies adopt this requirement to maximize competition in Government procurements.[8] The concern of the sponsors for the present statutory provisions clearly was that real competition must be achieved by the Government in purchasing its goods and services.[9]

If the intention of OFPP to reduce the potential number of offerors was not already clear from a comparison of the present statutes with that being proposed, the comments accompanying the proposed statute do announce specifically this intended result. The OFPP finds that the Government is presently suffering from having too many offerors: "Still another problem with full and free competition is that the Contracting Officer has little or no control over the number of prospective bidders who may respond to a given requirement.''[10] The concern expressed by OFFPP in this connection is that the Government, in any given procurement, may end up spending more money processing the number of offers received than the value of the contract itself.[11] Although the OFPP comments contemplate that the Government will seek "adequate" competition for the particular types of goods and services being called for in the solicitation, the statute itself permits the contracting officer to look to no more than two offerors in order to find that competition exists. Whether this is a valid definition will be analyzed below.

Even the expression that at least two offerors are required may be qualified in the proposed legislation, however. In a curious provision set forth in Section 101.(a)(4), the draft legislation says that effective and efficient competition will be achieved when there is "an expectation of greater benefits flowing from the competition than the combined executive agency and private sector costs of conducting the competition." This provision may mean that the contracting agency is excused even from the obligation of seeking to secure at least two offerors in the event that the agency judges that the governmental costs of undertaking a competitive procurement outweigh the perceived benefits.

The manner in which the Government would conduct this analysis is not covered in the comments and is conceptually troubling. The General Accounting Office has said that the benefits of competition can only be judged upon its realization—that is, a contracting agency is not free to avoid competition by speculating that the savings realized will be insubstantial.

Also of concern is that this possible relaxation of the obligation to solicit at least two offerors appears to violate a later section, Section 101.(b), of the proposed legislation which enumerates exceptions for "noncompetitive procedures." None of the five exceptions grant the type of discretion to the agencies which would be permitted by the provision at Section 101.(a)(4) wherein an agency could perhaps eliminate competition based upon a hypothetical projection of internal and external costs related to conducting the competition.

B. Limiting the Nature and Extent of Negotiations.

The radical change contemplated by OFPP in the conduct of negotiations by the Government is not specifically recognized in the legislation itself. Section 102.(c) states only that "[b]ids shall be evaluated with discussions whenever it is necessary to discuss the Government's requirements or the terms and conditions of the contract with bidders after receipt of bids but prior to award of the contract." Rather, one must turn to the accompanying comments to understand OFPP's new direction.

The comments describe three "new types of competition." The third of these three types is described as "multiple factors" competition. This category of procurement most closely aligns with the present use of negotiated procurements. The comments state that:[11]

> This type of competition considers the quantitative and qualitative value of the property or service to the Government. Procedures and evaluation factors for such competition will be tailored to the objectives, dollar value, complexity, and risk.[12]

The most significant difference between this type of competition and the other two types—labeled "price" competition and "lowest total cost" competition—is that the third category permits awards on other than cost or price alone. The comments provide that the multiple factors competition is "all inclusive,"[13] It can be used when the "Government's needs cannot be clearly defined;" when "[t]here is no defined solution to Government needs;" when "[e]valuation factors for award cannot be objectively measured;" or when "[t]echnical or management performance is critical."[14] Predictably, just as is true with negotiated procurement presently, this last category of competition will involve the greatest portion of procurement dollars. This category of procurement is intended to afford to the procurement agencies the greatest flexibility in conducting the procurements and in selecting a contractor.

The contemplated differences between this new type of negotiated procurement and that which is presently employed are significant. The OFPP states in its comments that the Government, under the new procedure, can decide to limit discussions to only one of several of the competing offerors:[15]

> Discussions may be conducted with one or more of the bidders when it is in the best interest of the Government. These discussions may range from clarification of bids to substantive technical, management, or cost factors.

This provision in the proposed system presumably will be implemented by regulation since OFPP has not chosen to note the possibility for selective and limited discussions in the draft statute itself.

This possibility for limited and selective discussions goes beyond the flexibility afforded to agencies under the present regulatory scheme. Current regulations generally applicable to civilian and military agencies provide that meaningful negotiations must be conducted with all offerors within the competitive range. The legislative history for the requirement in 10 U.S.C. §2304(g) to the effect that competition be maximized clearly provides that the negotiations be uniform:[16]

> It is our opinion that the authority to negotiate does not, of itself, warrant the curtailment of competition. Yet this may be the result where several proposals are received and the contracting officer decides to negotiate with only one offeror or to award a contract without discussion with any offeror....We believe that....negotiations [should be conducted] with all responsible offerors who submit proposals within a competitive range, price and other factors considered.

The General Accounting Office, in construing this statutory provision and the implementing regulations, had earlier concluded that in conducting meaningful negotiations a procuring agency was required to notify all offerors within the competitive range of identified deficiencies in their proposals and then give an opportunity to those offerors to submit a revised proposal. The General Accounting Office was, and generally is, equally clear that all offerors have to be treated in an evenhanded fashion and that one offeror could not negotiate exclusively with the Government without a similar opportunity being provided to other offerors. For example, the Government is generally not free to negotiate with one offeror after the close of best and finals without the agency reopening negotiations with all offerors within the competitive range and providing all an additional opportunity to submit a best and final offer.

A limited exception to this requirement for conducting meaningful negotiations developed in connection with certain NASA procurements. That agency developed a procedure[17] in which offerors were permitted opportunities to clarify proposals but deficiencies were not identified during the course of discussions. As a result of the submission of technical and price proposals, and any clarifications, NASA then would select one offeror with which negotiations were conducted to definitize the contract. Any challenges to this procedure as being violative of the statutory provision to conduct meaningful negotiations were rebuffed by the General Accounting Office.[18] This procedure is only employed by NASA in certain procurements.

The military departments, as a result of the success of NASA in withstanding challenges at the General Accounting Office, have adopted a "four-step procurement" approach which permits the military agencies much of the flexibility enjoyed by NASA. The first step calls for the evaluation and clarification of technical proposals submitted by the offerors. The second step involves evaluation and clarification of cost and price proposals. During the second step, offerors are advised of areas in their proposal for which clarification is required. The agency does not point out deficiencies or conduct "meaningful discussions" relating to the proposal. Further clarification of the technical proposals is elicited and a competitive range is established. The third step involves submission of final technical and cost proposals and the selection of a successful offeror by the Government. The fourth step then involves the negotiation of a definitized contract. Again, these procedures are applied only in a limited set of procurements.[19]

The OFPP draft legislation, at least as it is contemplated in the comments, embraces the four-step procedure but goes an additional step and releases the procuring agencies from the requirement of equal treatment during the individual steps of the negotiation process. The Government, under the proposal, could elect to conduct discussions with only one of the offerors at the same time it is seeking minimal clarifications from others.

The principal difference between this procedure and that currently in place under the four-step concept is that the individual offerors would not know who had been selected for award during the course of these negotiations. Unlike the four-step procedures where the negotiations only take place after selection, all offerors having submitted a proposal would be in the running for selection—at least in theory. The agency, however would be free to select a target company for award and then negotiate a contract with that company—still having the benefits of the appearance of competition to enhance the leverage available to the Government in negotiating terms and conditions with the intended offeror.

Other offerors, not designated as targets for award, would be kept in the competition to give a competitive appearance. Any realistic opportunity for these companies to be selected would be prejudiced, of course, by the failure of the Government to conduct other than pro forma discussions with them. Indeed, as is discussed below, the scheme proposed by OFPP even does away with the opportunity of these about-to-be-disappointed offerors to submit best and final offers: "If price competition exists, Government officials will not ask for or otherwise suggest a price reduction (*e.g.*, 'best and final offers') from prospective contractors unless there is a material change in scope of work or terms and conditions."[20]

Presumably, therefore, under the proposed scheme, the Government would be accorded almost complete discretion in deciding with whom and to what extent negotiations and discussions would be conducted. This opportunity would be extended beyond the present limited circumstances to which the four-step procurement approach is applied and would embrace almost all circumstances in which negotiated procurements are now conducted.

C. Removing the Concern for the Lowest Price and Getting Rid of the Best and Final Offer

The OFPP comments reflect a fundamental change in emphasis for the objectives of the Government in purchasing goods and services. The comments repeatedly point to the need to secure a "reasonable" price rather than the lowest evaluated price. For example, the OFPP states, "[t]o be effective, competition must be adequate to ensure that the Government acquires goods and services it needs at reasonable prices, and competition must be efficiently conducted."[21]

Institutional reasons may exist why a Government agency would prefer not to obtain the lowest price. One reason could be the difficulty of administering a contract in which the contractor is trying "to get well" from a proposed cost that was at margin. Whether this objective is valid can be questioned and is discussed below.

The OFPP, reflective of its indifference to obtaining the lowest price as opposed to obtaining a "reasonable" price, proposes in its comments to eliminate its present practice of establishing a common cut-off to negotiations by utilizing the mechanism of best and final offers. The practice of best and final offers is a device used by agencies to secure one last round of price reductions. A common opportunity is given to all offerors at the close of negotiations to submit a revised price and technical proposal. This best and final offer is then evaluated by the agency in selecting a contractor for award. With the exception available to the military department and NASA under the limited circumstances discussed above, this best and final offer precludes further negotiations except to the extent that the agency is willing to reopen negotiations with all offerors.

Typically companies will substantially reduce price proposals in the best and final offer. Dramatic examples in the recent past abound. In one celebrated case, the best and final offer reduced the prior price proposed by 50 percent.[22] The contractor, upon challenge at the General Accounting Office, maintained that this price reduction reflected a management decision to absorb some of the contract costs.

The Government agencies have long chafed at the increased administrative burdens that a requirement for a best and final offer imposes. Oftentimes the end of negotiations encroaches upon the deadline for commitment of funds and therefore real time presures exist in making the award decision. The agencies dislike the inconvenience of having to conduct a further significant review of the proposal late in the procurement in order to evaluate the technical significance of major price reductions. This last-minute evaluation, made significant by significant price reductions in the best and final proposal, substantially increases the workload on the agenicies at the tail end of the procurement. Administrative convenience is probably, therefore, the reason for the direction taken in the OFPP comments.

The OFPP constraint against soliciting best and final price proposals appears to extend throughout the solicitation period and prohibits generally seeking revised price proposals once initial price proposals have been submitted by the offerors: "If price competition exists, Government officials will not ask for or otherwise suggest a price reduction (*e.g.*, best and final offers') from prospective contractors unless there is a material change in scope of work or terms and conditions."[32] This statement suggests that the negotiations taking place after receipt of initial price and technical proposals will be limited to technical aspects; even though the negotiations bear on price, there is to be no further revision to price unless those changes can be said to be supported by a material change in scope of work.

A contractor, in the face of this lack of opportunity to revise price, presumably will have to price into the initial price proposal a certain contingency factor to cover technological growth to the proposal occurring during the negotiations. All this will likely increase prices to the Government.

The OFPP abandonment of the concept of best and finals is at odds with practices in the commercial marketplace. (Note that parallelism with that commercial marketplace is one of the professed goals of OFPP in suggesting the draft legislation.) Commercial companies regularly engage in last round price reduction negotiations with suppliers in order to arrive at the lowest possible price. Pricing by an offeror during the solicitation of a Government contract regularly includes as a matter of course a downward adjustment factor, perhaps approaching 15 to 20 percent of the bid price, which the prime contractor assumes can be exacted from suppliers upon award. This practice, of course, really extends the concept of best and finals comcercially rather than limiting its application as the OFPP now seeks to do.

IV. AN ECONOMIC ASSESSMENT OF THE PROPOSED OFPP CHANGES

This section will examine the economic implications of the changes suggested, either directly in the proposed legislation or indirectly in the comments, by the OFPP in connection with this uniform procurement proposal. The conclusion is that concentration in economic markets probably will be increased as a result of the changes proposed by OFPP. Certainly that result is suggested by applying traditional concepts of economic price behavior. A further logical conclusion from this analysis is that the Government will end up spending more money as a result of the changes suggested by OFPP. These conclusions are not empirically based but rather draw upon inferences supported by traditional economic theory. In addition, this analysis will address some historical notions of fairness and evenhandedness which, from a policy viewpoint, may also be used to judge the suitability of the changes being proposed by OFPP.

There is reason for great concern if the conclusion is valid that the changes by OFPP will decrease competition and increase concentration within the Government marketplace. A recent study prepared for the Federal Trade Commission analyzes two Government markets: the electronic and the helicopter industries.[33] The study notes the possibility that a lack of competition in these markets has spilled over and has resulted in increased concentration in the commerical markets for these same items. Therefore, the possibility that the OFPP changes will decrease competition must be carefully examined.

A. OFPP's Creation of Oligopolies

The OFPP, in the draft legislation, seeks to define competition as that situation in which at least two offerors respond to the Government's solicitation. This definition, however, is at odds with economic theory and likely will reduce the amount of competition characteristic of the Government contract marketplace. As discussed above, the present statutory command is that there be full and free competition; that is, responses are invited from all offerors seeking to compete in the selection process. Agencies are presently unable artificially to constrain the number of offerors.

An oligopoly is a market situation in which a few firms compete. These sellers, because of the limited number of participants, must take account of one another in their competition:[34]

> Market situations in which there are few enough sellers of a particular product for the activities of one to be of importance to the others are oligopoly situations. A single seller occupies a position of sufficient importance in the product market for changes in his market activities to have repercussions on the others. Other sellers react to the market activities of the one and their reactions in turn have repercussions on him. The individual seller is aware of this

> and in changing his price, output, sales promotional activity, or quality of his product he must take the reactions of others into account.

A true oligopoly situation is characterized in the long run by barriers to entry. The OFPP's action of defining competition for contracting officers as being satisfied with only two offerors helps create an entry barrier for any particular procurement. Indeed, the entry barrier is a perfect one. The contracting officer, when satisfied that the condition of two offerors will be met, can limit the participation of other offerors upon the OFPP's announced rationale that "too much" competition results in excessive spending by the Government in processing the various proposals. Fewer competitors are also administratively perceived as easier to handle.

The announced rationale by OFPP that the costs of competition are excessive certainly calls into question the studies utilized by OFPP in reaching this conclusion. The comments to the OFPP draft proposal do not provide elucidation as to the data sources upon which the OFPP drew these conclusions. The savings would have to be substantial in order to justify a diminishment of competition. One recent study found that competitive procurements result in savings to the Government of between 15 to 25 percent.[35] The speculative costs which the OFPP projects as incurred in processing "excessive" proposals has to be measured against this potential savings from competition.

Furthering oligopolistic markets generally portends four adverse consequences. *First*, an oligopoly will result in higher prices:[36]

> In oligopolistic industries demand curves faced by individual firms slope downward to the right, or are less than perfectly elastic. This much seems certain, whether or not individual firm demand curves can be located with accuracy. Consequently, marginal revenue for individual firms will be less than price. An individual firm, attempting to maximize profits or minimize losses, seeks the output at which marginal cost equals marginal revenue. Since the purely competitive firm maximizes profit at the output at which marginal cost equals price (and marginal revenue), the oligopolistic firm by comparison restricts output and charges a higher price.
>
> Since entry into an oligopolistic industry may be partially or completely blocked, prices may exceed average costs and profits may exist in the long run. To the extent that profits occur, consumers pay more for products than is necessary to hold the resources making them in the industries concerned.[36]

Second, the automatic tendencies for firms to realize maximum efficiency in a competitive market are reduced in the long run under an oligopoly. *Third*, sales promotional activity is increased generally in an oligopoly as firms seek to expand market share without price competition. This fact may lead to uneconomic use of resources since sales promotional activity does nothing to increase the actual utility of the particular resources being purchased. And *fourth*, collusive behavior is encouraged in an oligopolistic situation as the individual firms—being few in number—are able to anticipate and predict the behavior of each other.

In sum, the OFPP's elimination of "full and free competition"—an elimination which interestingly is described as inviting criticism from Congress[37]—can be predicted to have drastic effects in the Government marketplace. The presumptions which can be applied, absent compelling economic data to the contrary, are that prices will be generally increased to the Government and that the resources allocated to this marketplace will be unnecessarily increased. Furthermore, an oligopolistic market, which by definition is being created under the OFPP's definition of competition as being only two offerors, invites what the Government must perceive as deviant behavior on the part of participants. That is, an oligopolistic market is generally characterized by greater sales promotion activities and by the tendency towards collusive behavior.

In sum, it is not true that competition is maximized with only two offerors. This definition, lightly articulated by OFPP in the draft legislation, bears serious scrutiny. The potential dangers are substantial.

B. The OFPP's De-emphasis of Price Competition

The OFPP's repeated use of the term "reasonable price," as opposed to lowest price or lowest evaluated price, and the specific insistence that the Government not seek more than the submission of one price proposal (in the absence of compelling changes to the procurement) must be read as a movement away from securing goods and services at the lowest price. The OFPP says that it is reflecting a concern that the Government agencies be free to operate as commercial concerns. However, this proposal to diminish price competition by deleting the best and final offer is directly at odds with commercial experience.

Furthermore, it is a reasonable argument that Government agencies should operate under even stricter mandates to seek lower prices than commercial concerns. A Government agency after all is not ultimately an economic entity and performance is not judged by profits. The efficient allocation of resources therefore must be insured at the onset of the acquisition rather than awaiting assessment of the results. A contracting officer has no profit bottom line by which to judge the effectiveness of his particular decisions.

The OFPP, as a consequence of this fundamental difference between Government agencies and commercial concerns, should increase rather than decrease the awareness within agencies as to the need to allocate resources efficiently. This efficient allocation of resources, viewed from a societal perspective, must be measured in lowest price.

That is not to say, however, that the lowest evaluated price cannot reflect differences in products which have economic benefit for the Government. Indeed, such differences can be built into the selection rationale as part of the decision of what constitutes the most advantageous proposal for the Government. However, the price of that product is an important attribute which society expects Government agencies to regard in making the selection decision. The OFPP's proposal to reduce price competition is at odds with this societal expectation.

A de-emphasis of price competition necessarily will mean, in applying economic theory, that too many resources will be drawn to the Government economic sector. This general misallocation of resources also is at odds with how a competitive market system would desire to spend its purchasing dollars.

Certainly, as discussed above, there is administrative inconvenience in having to deal with "best and final offers." However, serving administrative convenience by reducing competition is contrary to both commercial practice (a goal which OFPP seeks to embrace) and the society's expectation that the Government will seek to use its allocated resources most efficiently. OFPP, contrary to its approach suggested in the comments, should be seeking to increase price competition rather than reflect its de-emphasis.

C. OFPP's Elimination of Equal Negotiation Opportunities

The OFPP, in its comments but not in the draft legislation, has articulated that an agency should be free to conduct "meaningful discussions" with only one of the offerors. The difference between this approach and that discussed above in connection with the four-step military approach or the specialized procurement utilized by NASA is that in those two types of procurement the negotiations are conducted with a selected offeror. That is, the offeror is on notice that the Government intends to award a contract to that entity and the negotiations are conducted in light of that knowledge. This results most probably in a situation as to a particular procurement where a monopsonist is facing a monopolist. The single governmental buyer is having to negotiate with the single seller at this point in the procurement and the result in terms of price or negotiating advantage is indeterminate. Economic analysis cannot successfully predict what will result when a monopsonist sits across the table from a monopolist. Rather, the ultimate terms and conditions will depend on the particular needs and bargaining abilities of each.

The OFPP proposal would ease the Government's negotiating problems of sitting across the table from a monopsonist. The OFPP comments contemplate that the Government can conduct negotiations with a single offeror without informing that offeror that the Government intends to contract with it. Other competitors will be kept in the competition for appearances sake so that the intended awardee still believes that it faces competition.

This proposal by OFPP does a great deal for Government agencies. First, it gives those agencies increased bargaining power in negotiating with contractors still afraid that they may not be selected for award. Second, the agency need not go through anything but pro forma negotiations with all other offerors and yet secure the benefits of the appearance of competition. This scheme will undoubtedly give increased leverage to the Government to exact at least better technical terms and conditions than could otherwise be expected. Probably this increased leverage will not result in better prices for the reasons suggested above (i.e., the deletion or elimination of best and final offers and a general de-emphasis for price competition).

This OFPP approach to negotiated procurements, while increasing the Government's ability to negotiate more advantageous contracts, invites criticism in terms of basic fairness. The approach necessarily means that offerors will be deluded into continuing participation in a procurement without any real possibility of selection for award. The Government, free under the OFPP's scheme not to announce its intended awardee and free to conduct meaningful negotiations with only that awardee, allows the continued "participation" of other offerors.

At least under the present four-step procedure, other offerors are notified that meaningful negotiations are to be conducted with only one offeror and therefore are not invited to expend additional resources in pursuing the competition. This assessment could not be made, however, under the approach now suggested by OFPP. Rather, competitors—never certain whether any one of their number was participating in more meaningful negotiations with the Government—would be led onto continued participation without any real opportunity for award. This approach seems basically unfair and at odds with the notion that the Government has an implied contract with a competitor to consider its offer fairly.

Concepts of fairness need not necessarily enter into considerations by a commerical concern in seeking to maximize its resources. However, this fact should not be true for the Government. Its citizens expect fair treatment and evehanded consideration. Contrary treatment is a fundamental flaw in the scheme set forth by OFPP in its comments to the draft proposal.

D. The OFPP's Efforts at Increasing Competition

The OFPP, in the draft statute and its comments, posits basically three different efforts at increasing competition within the Government marketplace. First, OFPP articulates a desire for Government agencies to use and seek commercially available products rather than specifically tailored products for the Government. Second, the OFPP confines sole-source procurements to five specific situations. And, third, the OFPP urges the creation of "competition advocates" within each agency for the purpose of increasing the agency's awareness of competitive opportunities. These suggestions, seemingly suggestive of a planned economy rather than one characterized by the workings of "free and full competition," probably will be ineffective.

The OFPP itself notes in its draft comments that the GAO has recently concluded that the military and civilian agencies have missed a number of opportunities to conduct competitive procurements.[38] The reasons cited by the GAO for these missed opportunities are the lack of awareness of competitive alternatives and the reflection of bias in favor of a particular producer either as a result of requests by the end-user or as a result of expressions from high-ranking officials. These circumstances would not be avoided under the first two alternatives suggested by the OFPP. The contracting officer still will have substantial discretion to find that the agency needs particularized products rather than those commercially available.

Also, the contracting officer has available in order to justify sole-source negotiations two rather broad-sweeping exceptions. Specifically, the contracting officer can proceed with a sole-source procurement upon the perception that the property or service is available from only one source or in the event that the urgency for the requirement is judged to preclude competition.[39]

As long as the contracting officer is granted substantial discretion in assessing whether or not goods or services are competitively available, the reasons cited by GAO for sole-source procurements in instances where competition could be had will probably not be reduced. The OFPP statute cannot guarantee that these abuses will be corrected under the proposed statute. This conclusion is particularly valid because OFPP has given further discretion to the contracting officer to select only two offerors to compete. The proposed statute, thus, can be viewed as an ineffectual effort to restrain the anti-competitive abuses of procuring agencies at the same time that substantially more discretion is being given to those agencies to reduce competition generally.

The OFPP's third alternative of recommending the creation of competition advocates also seems reflective of a planned economy. The OFPP's draft legislation reduces the workings of the marketplace by eliminating full and free competition and then creates an additional bureaucratic institution to achieve the results which otherwise would be expected from a competitive market.

Presumably the competition advocate would operate in somewhat the same fashion as the small business representatives now located within the agencies. It has been suggested, however, that the small-business advocates have not been particularly successful in changing the allocation of business between large and small concerns. Indeed, the percentage of Government procurement allocated to small business has remained roughly the same over time. Whether the competition advocates can be made effective, however, does not reduce the basic concern that they will not be as effective as would be the workings of full and free competition—a condition which OFPP in the draft legislation has sought to eliminate.

The best thing that can be said for the three proposed suggestions for encouraging competition is that they might further competition. This result is not guaranteed, however.

The absence of supporting data and economic analysis by OFPP calls into question whether or not adequate consideration has been given to the effects of the proposed statute on competition generally. The removal of full and free competition should give serious concern as to the suitability of the legislation in satisfying that new directive of Congress promulgated in the OFPP Act Amendments of 1979: "The use of full and open competition in the procurement of products and services...."

IV. CONCLUSION

The OFPP draft statute for a uniform procurement system and the accompanying comments contemplate three fundamental changes in the way the Government currently under statute undertakes negotiations. First, the Government would no longer need to seek "full and free competition" but could instead limit competition to but two offerors. This change is perceived herein to further the possibilities of oligopolistic markets, thereby inviting the host of adverse economic consequences which result. Predictably, the Government will in the long run end up paying greater prices for goods and services than under markets characterized by "full and free competition."

Second, the OFPP's comments envision a reduction of price competition through the elimination of best and final proposals. This elimination is at odds with commercial practice and also leads to a prediction that the Government in the long run will pay greater prices for its goods and services.

Third, the concept of negotiations envisioned by OFPP allows unequal bargaining with offerors. Although this approach will increase the Government's leverage in particular situations, a basic question exists as to the fairness to the other offerors who are participating simply to give the appearance of competition. This type of negotiation simply may not be fair and equitable—conditions which a citizenry likely expect from its Government.

The possibility of the results discussed above, admittedly only briefly stated in terms of economic possibilities, should give rise to serious concern with the OFPP draft statute. This concern is underlined by the apparent lack of economic analysis undertaken by OFPP.

The prejudice to our economic

system, if the OFPP draft statute in fact diminishes competition, could be significant. A reduction in competition in the Government marketplace may lead to greater concentrations of economic power in the commercial marketplace, thereby undercutting competition and the concomitant loss of the benefits of competitive procurement—estimated to be between 15 and 25 percent—will lead to greater expenditures by the Government and a misallocation of resources into the Governmental sector.

These objections at least invite serious rethinking by OFPP of its draft statute and probably mean that the present version of the statute is fatally flawed.

FOOTNOTES

[1] The Office of Federal Procurement Policy (herinafter "OFPP"), located organizationally with the Office of Management and Budget, has been legislatively charged, *inter alia*, to provide "overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel."

[2] 41 U.S.C. §401-12.

[3] P.L. 96-83, 93 Stat. 649, 96th Cong., 1st Sess.

[4] This policy expression is set forth in Section 401 of the Act amendments.

[5] The section, in full, reads:

COMPETITION

SEC. 101.(a) Executive agencies shall solicit bids from a sufficient number of prospective sources to ensure that the Government's needs for property or service are obtained through effective and efficient competition. Effective and efficient competition will be achieved when there is:

(1) sufficient latitude in an executive agency's expression of its need to permit suppliers to offer alternative solutions or designs;

(2) at least two or more bidders responding independently to an executive agency's solicitation for bids;

(3) an absence of bias or favoritism in the process of soliciting and evaluating bids and making contract awards; and

(4) an expectation of greater benefits flowing from the competition than the combined executive agency and private sector costs of conducting the competition.

(b)Procurement of property and services through noncompetitive procedures is appropriate only when competition cannot practicably be obtained consistent with the needs of the executive agency concerned. When utlizing noncompetitive procedures, the executive agency must be assured that the property or services are obtained at fair and reasonable prices. Circumstances under which a noncompetitive contract may be awarded are limited to the following—

(1) when the property or service to be procured is available only from a single source and no competitive alternatives are available in the marketplace;

(2) when the urgency for the requirement will not permit the delay inherent in competitive bidding, such as in the case of public exigency;

(3) when an award must be directed to a particular contractor in order to maintain an essential industrial capability or for purposes of industrial mobilization;

(4) directed procurement for foreign governments or procurement pursuant to international agreements, or

(5) when an award will be made to a contractor who has proposed an unsolicited, unique idea or innovation to the Government.

[6] This section states:

EVALUATION OF BIDS

SEC 102.(a) A bid to supply property or services to an executive agency shall be evaluated based on—

(1) the offered price of the property or services and other price-related factors;

(2) the total cost to the Government, including price and maintenance or operating costs over the useful life of the property or services; or

(3) the offered price of the property or services and other factors, including cost, technical, or management factors.

(b) Bids shall be evaluated without discussions whenever the Government's requirements and the terms and conditions of the contract can be sufficiently described to allow the timely preparation and evaluation of bids on a common basis without the need to hold discussions with potential bidders.

(c) Bids shall be evaluated with discussions whenever it is necessary to discuss the Government's requirements or the terms and conditions of the contract with bidders after receipt of bids but prior to award of the contract.

(d) The evaluation methods described in subsections (b) and (c) may be combined whenever it is necessary to conduct the evaluation of bids in successive steps.

[7] 10 U.S.C. §2304(g).

[8] 41 C.F.R. §1-3.805-1.

[9] See *Hearings on H.R. 5532 Before Senate Committee on Armed Services*, 87th Cong., 2nd Sess. (1962) (Statement of Chairman Vinson).

[10] OFPP *Proposal for a Uniform Federal Procurement System* 45 (draft, Oct. 29, 1981) (hereinafter referred to as "Comments").

[11] *Id.*

[12] *Comments* at 49.

[13] *Id.* at 52.

[14] *Id.*

[15] *Id.*

[16] H.R. Rep. No. 1959, 86th Cong., 2d Sess 27 (1960).

[17] NASA PRD 70-15 (Revised Dec. 5, 1975).

[18] *E.g.*, *Sperry Rand Corp.* (*Univac Div.*), 54 Comp. Gen. 408 (1974).

[19] See *Defense Acquisition Circular 76-17* (Sept. 1, 1979), *revised*, *Defense Acquisition Circular 76-18* (Mar. 12, 1979). The provisions are set forth in DAR 4-107.

[20] *Comments* at 47.

[21] *Id.* at 46.

[22] *Briston Electronics*, Comp. Gen. B-190341 (Aug. 16, 1978).

[23] W. Baldwin, *The Impact of Department of Defense Procurement on Competition in Commercial Markets: Case Studies of the Electronics and Helicopter Industries*, Federal Trade Commission (Dec. 1980).

[24] R. Leftwich, *The Price System and Resource Allocation* 212 (3rd ed. 1966).

[25] Smith and Lowe, *Sole Source and Competitive Price Trends in Spare Parts Acquisition*, 15 NCMA L.J. 51, 54 (1982).

[26] Leftwich, *supra* note 24, at 238.

[27] *Comments* at 66.

[28] *Comments* at 54.

[29] See *supra* note 5.